165-342

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~121~~ 18

MARTHA HOPKINS, MARTHA M. LEE, STEPHNEY FORREST, ET AL., APPELLANTS,

vs.

WILLIAM H. GRIMSHAW AND MARY J. BROOKS.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA.

FILED MAY 23, 1892.

(15,045.)

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1 In the Supreme Court of the District of Columbia.

MARTHA HOPKINS, MARTHA M. LEE, STEPHNEY FORREST, SOPHIE TAYLOR, THOMAS HENSON, ELIZABETH HENSON, HOBRON HENSON, MARY ROBINSON, REBECCA SHORTER, ELIZABETH SIMMS, PHILIP WELLS, and HORACE S. CUMMINGS, Trustee, Complainants,
vs.
WILLIAM H. GRIMSHAW and MARY J. BROOKS, Defendants.
} In Equity. No. 11824, Docket 29.

UNITED STATES OF AMERICA, *District of Columbia*, } *ss:*

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

2 *Bill.*

Filed May 24, 1889.

In the Supreme Court of the District of Columbia.

MARTHA HOPKINS, MARTHA M. LEE, STEPHNEY FORREST, SOPHIE TAYLOR, THOMAS HENSON, ELIZABETH HENSON, HOBRON HENSON, MARY ROBINSON, REBECCA SHORTER, ELIZABETH SIMMS, PHILIP WELLS, and HORACE S. CUMMINGS, Trustee,
vs.
WILLIAM H. GRIMSHAW and MARY J. BROOKS.
} In Equity. No. 11824, Docket 29.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainants state as follows:

1. All the complainants except the complainant Stephney Forrest, who is a resident of New Bedford, Massachusetts, are residents of the District of Columbia.

2. The defendants are also residents of the District of Columbia.

3. The complainants and defendants sue and are sued in their own right, except the complainant Cummings, who sues as trustee under the trust hereinafter mentioned.

4. That Stephney Forrest, late of the District of Columbia, but now deceased, being seized during his lifetime of original lots
3 nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), and eighteen (18) of square ten hundred and eighty-nine (1089) of the city

of Washington, in the District of Columbia, did by his deed dated the 25th day of September, 1845, and duly recorded in Liber W. B. 121, folio 251, of the land records of the District of Columbia, convey the said described real estate to David Redden, Daniel Simms, and William Barton "and their successors in office forever for the sole use and benefit of the Union Beneficial Society of the City of Washington for a burial ground and for no other purpose whatever."

5. That the said Union Beneficial Society was at the time of said conveyance and ever since — an unincorporated association of colored persons (some of whom were free and others slaves) existing in the District of Columbia; that said association was formed, as complainants are informed and believe, for charitable purposes and for affording mutual aid and relief to its members, and that the conveyance of said real estate was made to the said trustees for the sole purpose of a burial ground for the deceased members of said association.

6. That for many years after the making of said conveyance the said real estate was used as such burial ground, and a large number of bodies were there interred.

7. That all of the said trustees are long since deceased, leaving no successors in office; that the said association about six or seven years ago was so reduced in the number of its members that it disbanded and went out of existence, and the said real estate ceased to be used as a burial ground.

8. That on the — day of ——, 1883, the municipal authorities of the District of Columbia issued an order prohibiting the further use of said real estate as a burial ground, and that the same has been abandoned, and that during the months of February and March last all of the bodies interred therein were exhumed and removed, in accordance with said municipal order, and the said ground
4 is now unused and vacant.

9. That by the deed dated the 8th day of December, 1847, and recorded January 14th, 1848, in Liber W. B. 140, folio 261, of said land records, said trustees, Redden, Simms, and Barton, attempted to convey to James Lodge, James Gray, and John Haines (or Haimes), trustees of the "Navy Yard Sons of Union," another unincorporated association of free and slave colored persons, so much of said real estate as is contained within the following metes and bounds—that is to say: Beginning at the northwest corner of said square and running south 33 feet on a line with 16th street east, thence 177 feet due east; thence 33 feet north to the line of C street south, and with the line of C street south 177 feet to the place of beginning. Complainant-, however, *is* advised, and so avers, that the said trustees, Redden, Simms, and Barton, were without power to make said conveyance, and that nothing passed thereby.

10. That the said Stephney Forrest departed this life on the — day of ——, 1855, and that there are now surviving him the following persons, who are his sole heirs-at-law—that is to say: 1st, Mary Robinson, Rebecca Shorter, and Elizabeth Simms, who are the children of Elizabeth Wells, deceased and intestate, who was

intermarried with Philip Wells; said Elizabeth Wells was the oldest daughter of said Stephney Forrest; 2nd, Thomas Henson, Elizabeth Henson, and Hobron Henson, children of Nancy Henson (afterwards French), deceased and intestate, who was a daughter of said Stephney Forrest; 3rd, Martha M. Lee (widow), daughter of Henrietta Ross, deceased, who was a daughter of said Stephney; 4th, Sophie Taylor (widow), a daughter of said Stephney; 5th, Stephney Forrest (unmarried), a resident of New Bedford and a son of said Stephney Forrest, deceased; 6th. Martha Hopkins (widow), a daughter of said Stephney Forrest, deceased. All of the aforementioned heirs are the descendants of said Stephney Forrest by his first wife, Rebecca Forrest. After the death of the said Rebecca the said Stephney married one Rachel, who is now living, and by her the said Stephney left surviving him and now living Mary J. Brooks (widow).

11. That by deeds dated September 9th, 1887, and duly recorded September 12th, 1887, in Liber 1276, folio 304, of said land records the said Mary J. Brooks, daughter, and Rachel Forrest, widow, of said Stephney Forrest, deceased, conveyed all their interest in said real estate to the defendant William H. Grimshaw, who, by deed dated October 3rd, 1887, and recorded Oct. 5th, 1887, in Liber 1273, folio 307, of said land records, conveyed the said interest so acquired by him to Allen C. Clark, who with his wife, Sarah P. Clark, by deed dated the 3rd day of October, 1887, and duly recorded in Liber 1283, folio 154, of said land records, conveyed the same to Albert A. Brook and Appleton P. Clark, Jr., in trust to secure said Grimshaw the sum of $5,500, as will more fully appear by reference to said deed.

That thereafter--that is to say, on the 9th day of April, 1889—the said Albert A. Brook and Appleton P. Clark released to the said Allen C. Clark the said trust of the 3rd of October, 1887, as will appear by reference to the deed of release, recorded in Liber 1384, folio 151, of said land records; and thereafter, on the same day, the said Allen C. Clark and wife reconveyed the said property to the said Grimshaw, in whom is now vested the undivided interest of said Mary J. Brooks and Rachel Forrest, the said deed being recorded in Liber 1387, folio 39, of said land records.

12. That after the making of the deeds mentioned in the foregoing paragraph further deeds were executed to said Grimshaw as follows: 1st, a deed from John Haines, recorded in Liber 1312, at folio 182, of said land records, dated April 5th, 1888, and purporting to convey that portion of said square 1089 as is described in the 9th paragraph of this bill; 2nd, a deed from Henry Simms, Mary E. Chew, Julia A. Washington, Cordelia Moton, Jeremiah Simms, Edgar W. Simms, and Zacariah Simms, dated June 4th, 1888, and recorded in Liber 1324, folio 242, of said land records, and purporting to convey the said lots 9 to 18, both inclusive, in square 1089; 3rd, a deed from Arthur Wayne, Rosa Wayne, and Arthur Brooks, dated July 2nd, 1888, and recorded in Liber 1326, folio 341, of said land records, purporting to convey the said lots 9 to 18, both inclusive, of said square 1089.

13. Complainants are advised by counsel, and therefore aver, that the said deeds convey no estate in the property purporting to be conveyed and are clouds upon their title and should by decree of this court be so declared.

14. Reference is hereby made to the records of all of the deeds mentioned in all of the foregoing paragraphs of this bill, and leave is prayed to read the same or duly certified copies thereof on the hearing of this cause as often as occasion may require.

15. That all the heirs-at-law of said Stephney Forrest, deceased, have except the defendant Mary J. Brooks executed and delivered to complainant Cummings deeds of conveyance of the said lots 9 to 18, inclusive, as follows: 1st, a deed dated March 20th, 1889, from Mary Robinson, Rebecca Shorter, Elizabeth Simms, Philip Wells, Thomas Henson and Lavinia Henson, his wife; Hobron Henson and Charlotte Henson, his wife; 2nd, a deed of same date from Martha Lee, Sophie Taylor, and Martha Hopkins; 3rd, a deed dated March 27th, 1889, from Stephney Forrest, son of Stephney Forrest, deceased (Record, p. 175). By virtue of said deeds complainant Cummings now holds the entire legal title in trust for the other coplaintiffs to said property except the interest of the defendant William H. Grimshaw, and that a complete and perfect title to the same will be held by the complainants when this court has decreed the reverter which complainants are entitled to have declared by reason of the terms of the said original deed from Stephney Forrest to said trustees.

Prayers.

The premises considered, complainants pray as follows:

1. That the defendants, Wm. H. Grimshaw and Mary J. Brooks, be required to appear and answer the exigency of this bill.

7 2. That the said lots 9 to 18, both inclusive, of said square 1089 may be decreed to have reverted to the heirs of Stephney Forrest by reason of the terms and provisions and purposes of the original conveyance of said Stephney Forrest and the order of the municipal authorities and the carrying out of said order as set out in the 8th paragraph of this bill.

3. That a commission may also be appointed to partition the said lots between complainant- and the said defendant, William H. Grimshaw, who is the grantee of the defendant Mary J. Brooks, one of the heirs-at-law of said Stephney Forrest, as set forth in the bill.

4. That the said deeds mentioned in the 12th paragraph of this bill be declared a cloud upon the title of complainants and of no effect to pass any title to said property, and that the same be directed to be surrendered for cancellation.

5. That the complainants may have such further and other relief as the nature of the case may require and to the court may seem meet.

To which end complainants pray for process against the defendants.

The defendants to this bill are William H. Grimshaw and Mary J. Brooks.

FRANKLIN H. MACKEY,
Solicitor for Plaintiff.

8 *Subpœna to Answer.*

Issued May 24, 1889.

In the Supreme Court of the District of Columbia, May 24, 1889.

MARTHA HOPKINS *et al.*, Complainants, *against* WILLIAM H. GRIMSHAW *et al.*, Defendants. } No. 11824, Equity Docket 29.

The President of the United States to William H. Grimshaw and Mary J. Brooks, defendants:

You are hereby commanded to appear in this court at its first special term occurring ten days after service of this subpœna and answer the exigency of the original bill, under pain of attachment and such other process of contempt as the court shall award.

Witness E. F. Bingham, chief justice.

[SEAL.]

R. J. MEIGS, *Clerk, &c.*,
By L. P. WILLIAMS,
Assistant Clk.

MEMORANDUM.—That the defendant- herewith served *is* to enter appearance in this suit in the clerk's office on or before the day at which this writ is returnable; otherwise the bill may be taken for confessed.

Marshal's Return.

Returned May 27, 1889.
Served Wm. H. Grimshaw and Mary J. Brooks May 25, 1889.
A. A. WILSON, *Marshal.*

9 *Entry in Order Book* 11, *Page* 64.

HOPKINS *vs.* GRIMSHAW. } 11824.

Clerk will please enter my appearance for def't Grimshaw.

J. J. DARLINGTON.

June 4, '89.

Appearance, as ordered, entered.

BY THE CLERK.

'89, 6, 4.

Answer of Grimshaw.

Filed July 27th, 1889.

In the Supreme Court of the District of Columbia.

MARTHA HOPKINS, MARTHA M. LEE, STEPHNEY FORREST, Sophie Taylor, Thomas Henson, Elizabeth Henson, Hobron Henson, Mary Robinson, Rebecca Shorter, Elizabeth Simms, Phillip Wells, and Horace S. Cummings	In Equity. No. 11824.
vs.	
WILLIAM H. GRIMSHAW and MARY J. BROOKS.	

The answer of William H. Grimshaw to the bill of complaint
10 in the above cause.

This defendant, now and at all times hereafter saving and reserving to himself all benefit of exception which may be had or taken to the many errors, uncertainties, and other imperfections in said bill of complaint contained, for answer thereto or to so much and such parts thereof as he is advised it is necessary for him to answer, says:

1. He is informed and believes that the allegations of the first paragraph of the bill are true.

2. He admits that paragraph numbered two is true.

3. He denies on information and belief that the complainant Cummings sues as trustee, as alleged in paragraph numbered three, but says that he sues in his own right and for his own use, benefit, and profit.

4. It is true that Stephney Forrest, late of the District of Columbia and now deceased, was, while in life, seized of lots numbered 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, in square numbered ten hundred and eighty-nine (1089), in the city of Washington, but he was not seized thereof in his own right, but as agent and trustee of the Union Beneficial Association, as hereinafter more fully set forth.

Defendant admits the conveyance of said lots by said Forrest to Redden, Simms, and Barton, but he does not admit the effect or construction of said deed to be as complainants allege, and he begs leave to refer to said deed and matters hereinafter contained to determine the effect and construction thereof.

5. At the time of the conveyance the said Union Beneficial Association was and ever since has continued to be and still is an unincorporated association of free colored persons of the District of Columbia. It was organized in November, 1841, and has ever since been maintained as a society to promote the advancement and welfare of its members and to afford mutual aid, relief, and benefit to the members thereof while living and to the widow- and
11 children of deceased members. Its capital and revenue were derived from entrance or admission fees, from monthly dues paid by the several members, and from fines imposed upon its

members for violations of the constitution and by-laws of said association.

In the year 1845 a considerable sum of money had accumulated in the hands of the treasurer of said association from the sources aforesaid for which it had no immediate use, and it determined to and did use a part of it to purchase the several lots of ground in the fourth paragraph of complainants' bill mentioned. The said association authorized the said Stephney Forrest, now deceased, who was then a member thereof, to purchase said ground from the United States for the use and benefit of said association, and placed in his hands to be used in paying for said ground, and which he did use in paying therefor, the sum of one hundred and twenty-nine and $\frac{93}{100}$ dollars of the money and funds of said association. Thereupon the said Stephney Forrest, as the agent and trustee of said association, purchased the said ground, paying therefor with the funds of said association, and obtained a deed for it to himself from William Noland, commissioner of public buildings, which deed bears date the 9th day of August, 1845, and is of record in Liber W. B. No. 121, folio 250, of the land records of the District of Columbia, and defendant prays that he may have leave to read said deed or a certified copy thereof as part of this answer.

Afterwards, and in discharge of his trust aforesaid, the said Stephney Forrest, by his deed dated the 25th of September, 1845, being the deed mentioned in the fourth paragraph of complainants' bill, conveyed said ground to the said Redden, Simms, and Barton in trust for said association.

Said society purchased said ground with the purpose and understanding that it should be used as a burial ground and for no other purpose, and for this reason and none other was it so expressed in said deed to said trustees. The said limitation of use in said deed was not inserted therein at the instance or request of the said
12 Forrest or with the intent to create a conditional or limited estate in the grantees, but it was done merely to express the purpose of said association as to the use to be made of said ground. It is not true, as alleged in the bill, that the ground was to be used as a burial ground for members of said society only, but it was intended for and was in fact used as a burial ground for all persons who desired to use it as such, subject to the rules and regulations of said society.

6. It is true that for many years said ground was used as a burial ground as last above stated.

7. It is true that the trustees, Redden, Simms, and Barton, are dead, and successors to them were from time to time elected by said association, the members being of opinion that by the election of such successors title to said ground thereby at once vested in them, but respondent is advised that it did not, but that it passed to the surviving trustee, and at his death descended to his heirs-at-law charged with the trust aforesaid.

It is not true, as alleged, that the said association was disbanded six or seven years ago. It has never been disbanded, but has always

kept up its organization and still exists for all the uses and purposes for which it was created.

8. It is true that the municipal authorities of the District of Columbia having full right and legal authority for the purpose did, to wit, on the — day of ——, 188—, prohibit the further use of said ground as a burial ground and required the removal of the bodies therein buried, and said association was compelled to and did at great cost and expense exhume and remove from said ground all bodies therein buried, and was compelled to and did procure other ground for the reinterment of the bodies so exhumed and removed, and in order to pay the costs and expenses so incurred said association was compelled to and did borrow large sums of money, relying upon the proceeds of sale of the ground in question to repay and reimburse said association for its great outlay and expendi-
13 tures in this behalf.

9. Defendant admits that by deed dated the 8th day of December, 1847, the trustees, Redden, Simms, and Barton, conveyed to James Gray, John Haines, and James Lodge, in trust for another unincorporated society of colored persons known as the Navy Yard Sons of Union, the parcel of ground described in the ninth paragraph of complainants' bill, but he is informed and believes that some of the members of said society were slaves, as alleged, and he denies that said trustees had no power to make said deed, and that nothing passed thereby. If the allegations of the bill in this regard are material respondent calls for full proof thereof.

10. Defendant does not know whether the allegations contained in paragraph numbered 10 of the bill are true or not and he can therefore neither admit or deny the same; but if said allegations or any or either of them be material he prays that complainants may be held to strict proof thereof.

11. The allegations contained in paragraph eleven of the bill are admitted.

12. The allegations contained in the twelfth paragraph are substantially correct.

The said John Haines, who by his deed dated April 5th, 1888, conveyed a portion of said ground to this defendant, was the survivor of the three trustees to which said portion was conveyed, as set forth in the ninth paragraph of the bill, his cotrustees, Lodge and Gray, having before that time departed this life.

The said Henry E. Simms, Mary E. Chew, Julia A. Washington, Cordelia Morton, Jeremiah Simms, and Zachariah Simms, who made to this defendant the deed dated June 4th, 1888, for said lots 9 to 18, inclusive, were the only heirs-at-law of Daniel Simms, deceased, one of the trustees in the deed made by Stephney Forrest to Redden, Simms, and Barton. The said Daniel was the last survivor of said three trustees, his cotrustees, Redden and Barton, having died before him.

14 13. This defendant denies that the said deeds mentioned in the twelfth paragraph of the complainants' bill convey no estate in said property to him, but he is advised and believes, and so answers, that said deeds vest in him a perfect legal title to

all of said ground, and he says that he procured said deeds at the instance and for the use and benefit of the said Union Beneficial Association and at its expense, and he now holds the same in trust for said association and for no other use or purpose whatever. He denies that the said deeds to him or either or any of them are clouds upon the alleged title of the complainants, who have, as defendant is advised and believes, no right, title, or interest whatever in said ground.

14. Paragraph numbered 14 of the bill containing no allegation of fact, it is assumed that no answer is expected thereto.

15. Defendant does not know and cannot admit that all of the heirs of Stephney Forrest except Mary J. Brooks have executed deeds of conveyance of said ground to the complainant Cummings, and he calls for strict proof of all the matters and things alleged in the fifteenth paragraph of the bill.

Defendant denies that the complainants or either of them hold the legal title to said property or any part of it. He denies that any right or title to said property or any part of it ever vested in the heirs of said Stephney Forrest or any or either of them. He denies that the deeds of said heirs to said Cummings, if such deeds were ever made, did or could pass any title or right to said property to the grantee. He denies that there was or ever can be any reverter of the title to the heirs-at-law of said Forrest by reason of the language of the grant in his deed to Redden, Simms, and Barton or otherwise. He denies that said deed created an estate upon condition or a base or determinable fee; but he says that it vested in said trustees an absolute and indefeasible title in fee-simple
15 in said trustees; and he answers and avers that the said property was used by said association solely for the purpose of a burial ground as long as it was lawful to so use it, and said association only ceased such use of it when compelled to do so by law.

Defendant, having fully answered said bill, prays to be hence dismissed with his costs.

WM. H. GRIMSHAW.

STATE OF NEW YORK, }
County of Kings, } ss:

William H. Grimshaw, being duly sworn, says that he is the defendant named in the foregoing answer, and the facts and allegations therein stated as of his own knowledge are true, and those stated on information and belief he believes to be true.

WM. H. GRIMSHAW.

Sworn to and subscribed before me this 20th day of July, 1889.

[SEAL.] JNO. G. MORISON,
Notary Public.

Replication.

Filed August 8, 1889.

In the Supreme Court of the District of Columbia.

MARTHA HOPKINS *et al.*
vs.
WM. H. GRIMSHAW *et al.* } Equity. No. 11824.

The complainants hereby join issue with the defendant Grimshaw and will hear the cause on bill, answer, and proofs.

FRANKLIN H. MACKEY,
Solicitor for Complainants.

16 *Motion to Substitute Parties.*

Filed August 10, 1889.

In the Supreme Court of the District of Columbia.

MARTHA HOPKINS *et al.*
vs.
WM. H. GRIMSHAW *et al.* } Equity. No. 11824.

Rebecca Forrest, George Forrest, and Henrietta Forrest, only heirs-at-law of Stephney Forrest, deceased, now make known to the court through their solicitor, Franklin H. Mackey, Esq., that on the 17th day of July last the said Stephney Forrest, one of the plaintiffs named in the bill filed in this cause, departed this life intestate at New Bedford, in the State of Massachusetts, leaving surviving him the said Rebecca, George, and Henrietta Forrest, who are the children and only heirs-at-law of said Stephney Forrest. Wherefore they, adopting the allegations of the said bill, move the court by their said solicitor, Franklin H. Mackey, Esq., that they be made parties to this suit instead of said Stephney Forrest, deceased, and that they may be allowed to prosecute the same with the other plaintiffs.

FRANKLIN H. MACKEY,
Solicitor for Rebecca, George, and Henrietta Forrest.

J. J. Darlington, Esq., solicitor for defendant-:

Take notice that on Tuesday, the 13th day of August, A. D. 1889, or as soon thereafter as I can be heard, I shall call up the foregoing motion.

FRANKLIN H. MACKEY,
Solicitor for said Rebecca, George, and Henrietta Forrest.

17 *Order Making Parties.*

Filed August 14, 1889.

In the Supreme Court of the District of Columbia.

MARTHA HOPKINS *et al.*
vs.
WM. H. GRIMSHAW *et al.* } Equity. No. 11824.

The death intestate of Stephney Forrest, one of the plaintiffs herein, having been suggested — Rebecca Forrest, George Forrest, and Henrietta Forrest, through their solicitor, Franklin H. Mackey, Esq., and the said Rebecca, George, and Henrietta having moved, through their said solicitor, that they be made parties plaintiff in this cause instead of said Stepheny Forrest, deceased, and that they may be permitted to prosecute this cause with the other plaintiffs herein, it is this 14th day of August, 1889, ordered that the said motion be, and the same is hereby, granted, and the said Rebecca Forrest, George Forrest, and Henrietta Forrest be, and they are hereby, made plaintiffs instead of said Stepheny Forrest, deceased, with leave to prosecute said suit with the other plaintiffs herein.

CHARLES P. JAMES, *Justice.*

I consent to the above order.
J. J. DARLINGTON,
Solicitor for Defendant Grimshaw.

Order to Dismiss Bill Against Defendant Brooks.

Filed September 6, 1889.

In the Supreme Court of the District of Columbia.

MARTHA HOPKINS *et al.*
vs.
WILLIAM H. GRIMSHAW *et al.* } In Equity.

The complainants hereby dismiss the bill against the de-
18 fendant Mary J. Brooks.

FRANKLIN H. MACKEY,
Solicitor for Complainant-.

Entry in Order Book 11, page 122.

HOPKINS
vs.
GRIMSHAW. } No. 11824.

The clerk will please set this cause down for hearing.

FRANKLIN H. MACKEY,
Solicitor for Complainant-.

Feb'y 27, 1890, calendared as ordered.

BY THE CLERK.

'90, 2, 27.

19 *Complainants' Depositions.*

Filed April 5, 1890.

In the Supreme Court of the District of Columbia.

HOPKINS *et al.*
vs.
GRIMSHAW *et al.* } Equity. No. 11824.

At an examination held in the above-entitled cause, beginning on the 19th day of September, 1889, pursuant to notice, personally appeared Sophia Taylor, Martha Hopkins, Elizabeth Simms, Allen C. Clark, Martha Robinson, Martha M. Lee, Augustus Burgdorf, Mary Atchison, Rebecca Mitchell, the witnesses within named on behalf of the plaintiff-, and, after the witnesses had been sworn to speak the truth, the whole truth, and nothing but the truth touching the matters in issue, the within depositions were written down from the statements of the witnesses, read to them, and signed by me as examiner in accordance with the stipulation of counsel.

Messrs. Claughton and Mackey appeared for the plaintiffs; Messrs. W. L. Cole and Darlington appeared for the defendants. I am not of counsel for any of the parties in the cause or in any manner interested in its result.

JNO. CRUIKSHANK,
Examiner in Chancery.

20 In the Supreme Court of the District of Columbia.

HOPKINS
vs.
GRIMSHAW. } Equity. No. 11824.

WASHINGTON, D. C., *Sept. 19th*, 1890,
FRIDAY, 2 P. M.

Met pursuant to notice.

Present: Messrs. Claughton and Mackey, counsel for the plaintiffs; Messrs. W. L. Cole and Darlington, counsel for the defendants; witnesses; also the examiner.

Whereupon SOPHIA TAYLOR, a witness of lawful age, being produced for and on behalf of the plaintiffs and being duly sworn according to law, deposes and says as follows:

Direct examination.

By Mr. MACKEY:

Q. Do you know Martha Hopkins?
A. Yes, sir.
Q. And the other parties to this suit?
A. Yes, sir.

Q. Do you know Mr. Grimshaw?
A. Yes, sir.
Q. Who are you the daughter of?
A. Stephney Forrest and Rebecca.
Q. Who was Rebecca; his first wife?
A. His first wife, Rebecca Harley.
Q. How many times was Stephney Forrest married?
A. But twice.
Q. The second time he married who?
21 A. Rachael.
Q. How many children did Stephney Forrest have? Give the names of those living now.
A. There are but two living now—myself and sister Martha. Her brother is dead.
Q. Now, did you know Stephney Forrest? Did you have a brother named Stephney Forrest?
A. Yes, sir.
Q. Is he living or dead?
A. He is dead now.
Q. He died recently?
A. Yes, sir; recently; about a month ago.
Q. Do you know Martha Lee or Martha Ross?
A. Yes, sir; she is my sister's daughter.
Q. What sister?
A. Henrietta.
Q. The daughter of Henrietta Ross?
A. Yes, sir.
Q. Stephney Forrest was your brother, I understand you to say?
A. Yes, sir.
Q. The son of Stephney Forrest by his first wife, Rebecca?
A. Yes, sir.
Q. Thomas Henson—do you know who he is?
A. Yes, sir.
Q. Who is he?
A. My sister's grandson.
Q. What sister?
A. Sister Wells.
Q. The wife of Philip Wells?
A. Yes, sir.
Q. Elizabeth Henson—who is she?
A. Thomas Henson's sister.
22 Q. And Hebron Henson?
A. Thomas Henson's brother.
Q. Now, they are the children of whom?
A. Nancy Henson or Nancy French?
Q. Nancy French was the daughter of whom?
A. Betsey Wells and Philip Wells. Betsey Wells was Philip Wells' wife.
Q. Was she related to you—Betsey Wells?
A. My sister.

Q. Do you remember the marriage of the mother of Thomas Henson and the father of Thomas Henson?

A. Yes, sir.

Q. You remember the marriage?

A. Yes, sir.

Q. Did you see the marriage?

A. I did not see them married. They were married at Philip Wells' house. We were near neighbors.

Q. Who is Mary Robinson?

A. She is my sister's daughter.

Q. What sister?

A. Betsey Wells' oldest daughter.

Q. She is the sister of Mrs. Elizabeth Henson?

A. The aunt; Elizabeth Simms' sister.

Q. What relation are they to Elizabeth Henson—Mary Robinson to Elizabeth Henson and Thomas Henson?

A. Their aunt.

Q. Mary Robinson is the aunt of Elizabeth Henson?

A. Yes, sir.

Q. Rebecca Shorter—who is she?

A. She is also an aunt of these children.

Q. Rebecca Shorter was the daughter of whom?

A. Betsey Wells and Philip Wells.

23 Q. And Elizabeth Simms?

A. She is also a daughter of Betsey Wells.

Q. Now, Philip Wells; who is he?

A. I know him by marrying my sister.

Q. He married your sister, Elizabeth or Betsey Shorter. She was a widow and the daughter of Stephney Forrest?

A. Yes, sir.

Q. Her name at the time she was married was Shorter?

A. Yes, sir.

Q. She had been already married?

A. Yes, sir.

Q. And she was a widow at the time of her marriage to him?

A. Yes, sir.

Q. Do you remember your father, Stephney Forrest?

A. Perfectly.

Q. What is your age now?

A. Well, according to them papers my age is 82 or 83.

Q. How old were you at the time the British were here?

A. I don't know, but I think I was 12 or 13. I think I was a good smart child.

Q. When you were about 40 or 50 what was Stephney Forrest doing at that time for a living?

A. He was sawing wood.

Q. Did he saw it himself or have some one to saw it for him?

A. He had people to assist him.

Q. Do you know whether he ever worked for the Government?

A. He sawed wood for the Capitol and the Government offices.

Q. Did he do it himself or employ men to help him?

A. He employed men to assist him. He had the contract, and got men to help him.

Q. He got the contract from the Government to saw wood for the departments and employed men to do it?

A. Yes, sir.

24 Q. For a man in slavery days in Washington was he not pretty well off for a colored man?

Mr. DARLINGTON: I object on the ground that it is incompetent examination-in-chief.

Q. Was he in comfortable circumstances or not?

A. He was in comfortable circumstances. As far as I know of, he was never in a suffering condition; even in times of the Mexican war, when everything was as high as it could be, he lived and got along.

Q. Did he own any property at that time?

A. Yes, sir; he owned a house and home on 3d street. I never knew him to be in a suffering state.

Q. How old were you when he first owned the house you speak of, where he lived?

A. I could not tell you. I was a child when he bought the house.

Q. Did he own more than one lot?

A. Two lots, the one the house stood on and the other one next to it.

Q. Were you a slave in your youth?

A. Yes, sir; I was.

Q. Who was your owner?

A. Miss Nancy Baker.

Q. Who owned your mother?

A. Miss Nancy Baker.

Q. Was Stephney Forrest a slave?

A. He was.

Q. In early life?

A. He was; yes, sir.

Q. Do you know where they were married?

A. I am told they were married at Bellevue; I could not know that of my own knowledge.

Q. You mean Bellevue, Maryland?

A. Yes, sir.

Q. How far is that from here?

25 A. On the heights over here (indicating). They were married by Parson Addison.

Q. Who told you they were married in Bellevue, Maryland?

A. My sister's husband spoke of it often.

Q. Were they recognized by Mrs. Baker as man and wife?

A. Yes, sir; they were recognized as man and wife.

Q. Who owned Stephney?

A. Mr. Overton Carr, of Maryland.

Q. Did you know him personally?

A. No; I knew his son.

Q. How did you get to be free?
A. My mistress had me emancipated.
Q. How did your children get free?
A. I bought them. My father bought my children.
Q. Your father bought them?
A. He bought them out of the hands of their owners and gave me time to pay him back the money he had borrowed to buy my children.
Q. He bought them from their owners?
A. Yes, sir.
Q. How did his wife get free?
A. I was informed he bought her.
Q. Do you know anything of this society, the Union Beneficial Society, that owned the burying ground that you filed the bill about?
A. I did know something about it.
Q. Were you a member of it?
A. Of the women's portion of it.
Q. What has become of that society—the women's portion of it?
A. The society died down to such a few it was necessary to disband them. All who were so disposed went over to another society, another female society.
Q. Do you remember the name of the other society you went into?
A. The Daughters of Zion.

26 Mr. DARLINGTON: We object to any testimony as to this society as incompetent and irrelevant.

By Mr. MACKEY:

Q. How long ago was that disbanded?
A. I do not know; it has been about four or five years.
Q. Do you know what became of the men's branch of the society?
A. That also died down to two, to the best of my recollection.
Q. What was the name of those two?
A. One was named Becket and the other Philip Wells.
Q. What has become of Becket?
A. He is dead,
Q. So that Philip Wells is the only living member of that society?
A. Of the old society, that I know of.
Q. Was he ever an officer of that society?
A. I am told he was. At one time he was president of it, so I am told.
Q. You do not know?
A. No, sir.

Cross-examination.

By Mr. DARLINGTON:

Q. Where do you live?
A. I live on 3d street between North Carolina Ave. and G St.

By Mr. DARLINGTON: As Mr. Grimshaw is absent from the city and has in his possession documentary evidence of Stephney Forrest's family, I reserve the right to recall this witness for cross-examination.

The foregoing deposition of Sophia Taylor is, by stipulation of counsel, signed by the examiner as of the 19th day of September, 1889.

JNO. CRUIKSHANK,
Examiner in Chancery.

27 MARTHA HOPKINS, being produced as a witness of lawful age for and on behalf of the plaintiffs and being first duly sworn according to law, testifies as follows:

Direct examination.

By Mr. MACKEY:

Q. Who are you the daughter of, Martha?
A. Stephney Forrest and Rebecca Forrest.
Q. How old are you?
A. About 72, I guess.
Q. Do you know Martha Lee or Ross?
A. Yes, sir.
Q. Who is she?
A. She is my niece.
Q. The daughter of whom?
A. Martha Ross.
Q. She is your sister, Martha Ross?
A. Yes, sir.
Q. Daughter of Stephney Forrest and Rebecca?
A. Yes, sir.
Q. And who is Sophy Taylor?
A. She is my sister.
Q. And the daughter of whom?
A. Rebecca and Stephney Forrest.
Q. Who are Thomas Henson and Elizabeth Henson?
A. My nieces.
Q. They are the children of whom?
A. Of Nancy Henson.
Q. Before that who was she?
A. Nancy French.
Q. Nancy French was the daughter of whom?
A. Elizabeth Wells.
Q. Elizabeth Wells, the wife of Philip Wells?
28 A. Yes, sir.
Q. Mary Robinson, was she the daughter of Philip Wells and Elizabeth Wells?
A. Yes, sir.
Q. Rebecca Shorter, who is she the daughter of?
A. Of Philip and Elizabeth Wells.

Q. And Mrs. Simms?
A. She is a sister of Mary Robinson.
Q. And the daughter of whom?
A. Elizabeth Wells.
Q. Philip Wells and Elizabeth Wells?
A. Yes, sir.
Q. How many of the children of Stephney Forrest are living?
A. Myself and Sophy Taylor.
Q. You had a brother by the name of Stephney Forrest?
A. Yes, sir.
Q. Is he living?
A. No, sir.
Q. How long since he died?
A. Not more than two or three months.
Q. Do you know whom your brother, Stephney Forrest, married?
A. I disremember.
Q. Nancy Henson was the mother of Thomas Henson, Elizabeth Henson, and Hebron Henson?
A. Yes, sir.
Q. Well, who did she marry—what was her husband's name?
A. The first one, Thomas Henson.
Q. What has become of him?
A. He is dead.
Q. Is Nancy Henson dead?
A. Yes, sir.
Q. Were they free or slaves?
A. They were slaves when they were married. She was a
29 slave; he was not.
Q. Were they married in this District?
A. Yes, sir.
Q. Did they live together as man and wife in this District?
A. Yes, sir.
Q. Before the war?
A. Oh, yes, sir.
Q. Tell us who Rebecca Shorter is.
A. She is the daughter of Elizabeth Wells by her first husband. She is the daughter of Elizabeth Shorter.
Q. Elizabeth Wells was Elizabeth Shorter before she married Wells?
A. Yes, sir.
Q. And Rebecca is the daughter of that union?
A. Yes, sir.
Q. He was a slave?
A. Yes, sir.
Q. Was Rebecca Shorter a slave?
A. No; she has been always free.

Cross-examination.

By Mr. DARLINGTON:

Q. What was Elizabeth Wells' first husband's name?
A. Shorter; Edward Shorter.
Q. Did you know him?
A. Yes, sir; I knew him.
Q. When did he die?
A. I could not tell you; he has been dead a great many years.
Q. Were you grown when he died?
A. No, sir; he died before I was grown.
Q. How large were you?
A. I was good size; about 12 or 13 years old.

30 Mr. DARLINGTON: I reserve the right for further cross-examination when Mr. Grimshaw is here.

The foregoing deposition of Martha Hopkins, after having been reduced to long-hand from the stenographic notes, is in pursuance of the stipulation of counsel, signed as of the 19th day of September, 1889, by the examiner.

JNO. CRUIKSHANK,
Examiner in Chancery.

ELIZABETH SIMMS, being produced as a witness of lawful age for and on behalf of the plaintiffs, deposes and says as follows:

Direct examination.

By Mr. MACKEY:

Q. Who are you the daughter of?
A. I am the daughter of Edward Shorter and Elizabeth Shorter.
Q. Your mother afterwards married Philip Wells?
A. Yes, sir.
Q. Do you remember the society that has been spoken of here—the beneficial society?
A. I do remember it. I was one of the members.
Q. What became of that society?
A. It died out, sir; only 11 of us came out.
Q. What did you 11 members do?
A. Went into another society.
Q. You are speaking, are you not, of the female branch of the society?
A. The female society.

Mr. DARLINGTON: The objection repeated as to all testimony concerning the female society.

Q. State whether the Union Beneficial Society consisted of
31 two branches—a male and female branch.
A. Male and female branch; yes, sir.
Q. You belonged to the female branch?
A. Yes, sir.

Q. Now, what has become of the male branch of that society?
A. The best portion of that died out.
Q. Who are the last members of it you know of?
A. I can remember Mr. Chew.
Q. What has become of him?
A. He is dead.
Q. What has become of Mr. Becket?
A. He is dead.
Q. Did he ever hold any office?
A. I don't know. I think he held nearly everything there. I don't know what he held.
Q. Was he a member?
A. He was a member.
Q. Do you know of any person living today who is a member of this society or who were members, except Philip Wells; any persons living, I mean?
A. Mr. Middleton and Mr. Wilkinson. I heard they belonged to it. I don't know whether they were members of the old society.
Q. I am speaking of the members of the old society.
A. I don't know one that is living but my father.
Q. Do you know when Middleton and Wilkinson joined this society?
A. I do not. I could not say when they joined it.
Q. You have heard them claim to be members of the society?

Mr. DARLINGTON: I object, as the witness did not say anything of the sort.

Q. You say you heard they joined the society?
A. Yes, sir.
32 Q. Who did you hear that from?
A. I don't know who I heard it from; I have seen them at my father's.
Q. How long ago has that been?
A. If my memory serves me right, it is five years since I saw them last.
Q. Do you know whether they claimed to be members at that time or not?
A. I do not; I did not hear the conversations.
Q. How long ago was it since you first heard that they were members of this society?
A. Really, I could not tell you. I don't remember; I don't know; I could not say.
Q. Well, did this society hold different meetings, or did the women and men meet together?
A. No, sir; not in my time.
Q. Did they after?
A. I don't think they did.
Q. They held separate meetings?
A. Separate meetings.
Q. How long is it since the female branch held a meeting?

A. If my memory serves me, I think about three years ago or between three and four years ago.
Q. Gives us your recollection of it.
A. About three years ago, according to my recollection.
Q. What did they do at the last meeting?
A. They only said they were going to join the other society—join the Daughters of Zion—and those who were willing to go with them might go, and I believe there were eleven (11) of us that joined the Daughters of Zion.
Q. Was that the meeting at which the society disbanded?
A. Yes, sir.
Q. There has never been any more since?
33 A. No, sir.

Mr. DARLINGTON: Counsel for the defendants gives notice that if this testimony is material at all they object to the testimony and call for the minutes.

By Mr. CALUGHTON:

Q. Did you keep books or minutes?
A. We had books. I don't know where the books are now.
Q. A memorandum of what was done?
A. Yes, sir.
Q. Do you think you could get them?
A. I do not know.
Q. Do you know where they are?
A. No, sir; I do not.
Q. Could you find out?
A. I think Mrs. Robinson, my sister, knows.
Q. I wish you would get them.
A. Yes, sir.

Cross-examination.

By Mr. DARLINGTON:

Q. How old are you?
A. 57.
Q. How old were you when your father died?
A. About four years old.
Q. When did you join this female society you spoke of?
A. I joined it in the year Mr. Lincoln took his seat.
Q. Was that the time the society was started?
A. No, sir. It was started in my mother's young days.
Q. What was the name of the society you belonged to?
A. The Female Daughters of the Union.
Q. Did they have a president?
34 A. Yes, sir.
Q. Who was the president; man or woman?
A. A woman. We always had women.
Q. All of the offices were held by women?
A. Yes, sir.

Q. Did any men hold offices?
A. No, sir.
Q. They did not have anything to do with the men?
A. No, sir.
Q. It was a separate organization?
A. Altogether, sir; the men met one place and the women another.
Q. You did your business and they did theirs?
A. Yes, sir.
Q. And had nothing to do with the others?
A. Yes, sir.

Mr. DARLINGTON: I reserve the right to call this witness for further cross-examination.

Redirect examination.

By Mr. MACKEY:

Q. You have said this society, the Union Beneficial Society, was divided into two branches, a male and female?
A. That was before my time; it was so divided when I joined. I don't know whether they ever met together.
Q. You have said they were separate, one branch was male and the other female?
A. Yes, sir.

Mr. DARLINGTON:

Q. I will ask you whether there was any connection between them.
A. No, sir; none in the world.

35 By Mr. MACKEY:

Q. You do not know when it was divided?
A. I do not know when it was divided.
Q. You have said it was divided into two branches?
A. I know there was two branches, because one was male and the other female.

By Mr. DARLINGTON:

Q. You don't know whether they ever had anything to do with each other?
A. No, sir; I do not.
Q. How long was it after your father died; was it before your mother married Wells?
A. I don't know how long. I heard she lived a widow seven years.

The foregoing deposition of Elizabeth Simms is signed by examiner, as by stipulation of counsel, as of the 19th day of September, 1889.

JNO. CRUIKSHANK,
Examiner in Chancery.

Whereupon the session was adjourned to Tuesday, Sept. 24th, at 2 o'clock.

Further adjournment to October 1, 1889, at 2 o'clock p. m.

J. C., *Examiner.*

For further testimony of Elizabeth Simms, see page 30.

36 In the Supreme Court of the District of Columbia.

HOPKINS
vs.
GRIMSHAW.

WASHINGTON, D. C., *Oct.* 1, 1889,
TUESDAY, 2 P. M.

Met pursuant to agreement.

Present: Messrs. Mackey and Claughton, counsel for the complainant-; Messrs. Darlington and Cole, counsel for the defendant-; witnesses; also the examiner.

Whereupon ALLEN C. CLARK, a witness of lawful age, being produced for and on behalf of the complainant-, being first duly sworn according to law, testifies as follows:

Direct examination.

By Mr. MACKEY:

Q. What is your business?

A. Attorney-at-law.

Q. Where is your residence?

A. 117 7th St. N. E., Washington, D. C.

Q. Mr. Clark, it appears of record that on October 3d, 1887, William Grimshaw executed to you a deed of lots 9, 10, 11, 12, 13, 14, 15, 16, 17, and 18, in square 1089. Do you know Mr. Grimshaw?

A. I do.

Q. Will you state the circumstances of that transaction, how the deed came to be executed to you, and what Mr. Grimshaw said to you at the time in reference to this title?

A. Well, in the first place, Mr. Burgdorf sais Mr. Grimshaw had a square of ground occupied as a grave-yard and he thought I could purchase it at a price by which I could realize a good profit.

37 Mr. Burgdorf and myself called on him in the first instance, but after that we had quite a number of interviews and finally I bought the entire square from Mr. Grimshaw.

Q. These lots constitute only half of the square?

A. I bought the square as an entirety.

Q. Did he claim to own this property?

A. He claimed to own the property when I bought it and furnished me with a certificate of a title examiner to that end.

Q. That he was the owner?

A. Yes, sir.

Q. State the terms of the purchase.

Mr. DARLINGTON: I object to the question as incompetent and irrelevant and without any materiality to the issues in this case.

A. The price was $7,200. I gave a deed of trust for $5,500 and cash $1,700.

Q. For the whole square?

A. Yes, sir.

Q. You gave a deed of trust for $5,500 and the balance you paid in cash?

A. Yes, sir.

Q. Here is a deed of Oct. 3d, 1887, recorded Oct. 6th, 1887, in Liber 1283, folio 154, to secure William Grimshaw $5,500, one note for $1,500 and one for $4,000, on or before one year. Is that the deed of trust you refer to?

A. Yes, sir.

Mr. MACKEY: I ask leave to put in evidence a certified copy of the deed from William Grimshaw to Allen C. Clark, dated Oct. 3d, 1887, recorded Oct. 5th, 1887, in Liber 1273, folio 341.

By Mr. MACKEY:

38 Q. What became of that trust, Mr. Clark?

A. It was discharged by paid. I paid the first note of $1,500 and the other was surrendered in a settlement I had with Mr. Grimshaw.

Q. What was the settlement so far as it relates to this north half of the square?

A. I released the north half of the square upon the surrender of the $4,000 note.

Q. What brought about that—why did you have it released?

A. Some months after I bought the property I went and made an examination of the title. I suspected it was not altogether straight and I demanded that the outstanding notes should be put in escrow until the matter was ascertained and the $4,000 note was put in escrow.

Q. Did you ever make any investigation as to the parties under whom he claimed?

A. I made some inquiry as to the statements made in the deeds to Grimshaw, both as to the heirs of Stephney Forrest and certain heirs of trustees. I never made a full investigation.

Q. Did Grimshaw ever state to you how he claimed title to this property?

Mr. DARLINGTON: Objected to as irrelevant and incompetent.

Q. Through whom?

A. Grimshaw claimed that he had the Stephney Forrest title, whatever that was, by a deed from his sister-in-law, Mrs. Brooks. He claimed to have the other titles by deeds from the surviving heirs of trustees.

Q. Did he tell you in what manner Martha J. Brooks had the title to this property?

Mr. DARLINGTON: Last objection renewed.

A. He claimed that she was the sole surviving heir of Stephney Forrest.

Q. Did he tell you how Stephney Forrest became owner of this property, if he said anything about it?

A. He claimed that it was conveyed as a burial ground only, and when it ceased to be so used it then reverted to Stephney Forrest and his heirs, and Mrs. Brooks was the sole heir of Stephney Forrest.

Q. He claimed under her?

A. Yes, sir.

Cross-examination.

By Mr. DARLINGTON:

Q. You have stated you became suspicious it was not straight. What was the difficulty about it?

A. If I had the chain of title here I could tell, but it was that there was quite a number of conveyances, and in every instance there was a sole surviving heir, which was something I considered remarkable, but I made some examination of the record both as to the north half and the south half and I concluded that the south half was all right, but there were some matters of law involved as to the north half as to ownership.

Mr. MACKEY: The north half is the Stephney Forrest half?

A. Yes, sir.

By Mr. DARLINGTON:

Q. Is it not a fact that the only reason you ever assigned for desiring to rescind the transaction was your doubts as to whether property conveyed for a cemetery could be sold for other purposes?

A. Well, my belief in the matter was at the time that there was no title at all that could be conveyed. If the grave-yard had the property there was nobody authorized to it. I thought if there was any authority to sell it it must be by an act of Congress.

Q. That was the only reason you ever assigned why the $4,000 note should be put in escrow, why, virtually, the transaction should be rescinded, is it?

A. Well, the reason assigned by me was that the title was defective, and until this was ascertained beyond a doubt I must be protected from the $4,000 note.

Q. The only defect in the title of which you gave any notice to Grimshaw or to Mr. Brooke or to myself was this matter of the grave yard, was it not?

A. I claimed also that the deeds he made were false.

Q. To whom did you make that claim?

A. To Grimshaw. I refer especially to the deed made by the heirs of trustees.

Q. You never intimated that to Mr. Brooke or myself?

A. I did to Mr. Brooke.

Q. What intimation did you make to him on that subject?

A. I told him that the representations, I believed, as to the ownership were incorrect.

Q. How much money did you pay Grimshaw altogether?

A. I made a cash payment in full.

Q. How much?

A. $1,700 and the first note of $1,500.

Q. $3,200 in all?

A. Yes, sir.

Q. That was repaid you, was it?

A. Well, that has been repaid.

Q. How much did he repay you altogether?

A. He refunded to me the money that I had spent, together with about three per cent. interest. I can't give you the exact amount without reference to my cash account.

Q. You can before you sign your deposition?

41 A. Yes, sir.

Q. And will do so?

A. Yes, sir.

Q. Thereupon you reconveyed the property to him?

A. Yes, sir; I conveyed to him the north half upon the release of the trust, which affected both the north and the south half.

Q. Did you ever have any title to the south half?

A. I bought the title when I bought the north half. The south half was all right.

Q. Do you now hold it?

A. I sold that.

Q. To whom?

A. I agreed with Mr. Grimshaw to convey all my interest back again for the money I put in it and three per cent. interest, and upon that agreement he sold the south half to Messrs. Slater. * * * That agreement was consum-ated.

Q. Virtually you rescinded the whole transaction?

A. Yes, sir; that is it. I was replaced in the position I was at first.

Q. And he was replaced in the position he was at first?

A. Yes, sir.

Q. You have stated that Grimshaw claimed to be the owner of that property. Did he ever have any conversation with you as to the nature of his ownership; did he ever claim to you that the title of the property was in him?

A. He never spoke of any trust capacity which I considered to infer he owned the property or the title was in him, which I considered the same thing.

Mr. DARLINGTON: I reserve the right to further cross-examine when Mr. Grimshaw returns.

42 Redirect examination.

By Mr. MACKEY:

Q. I will ask you to identify this agreement (handing witness an

agreement from Grimshaw to Allen C. Clark, dated the 28th day of January, 1889, which is recorded in Liber 1376, folio 447, of the land records of this District). Is that the agreement you made?

A. That is the agreement.

It is agreed by counsel that a copy of this agreement may be hereafter filed, subject to any objection as to its competency, and it is now offered in evidence and marked Exhibit Plaintiff- No. 1., J. C., examiner.

By the WITNESS: In answer to one of the questions of Mr. Darlington I stated that Grimshaw had repaid me. He repaid me partly in money and partly in notes, which are not yet matured.

By Mr. DARLINGTON:

Q. Are they secured?

A. Yes, sir; second deed of trust. They are secured.

The foregoing deposition of Allen C. Clark, after having been reduced to long-hand from the stenographic notes, is, by stipulation of counsel, signed by the examiner as of the first day of October, 1889.

JNO. CRUIKSHANK,
Examiner in Chancery.

ELIZABETH SIMMS recalled by Mr. Mackey.

Direct examination.

By Mr. MACKEY:

Q. Do you know how long it has been since there has been a meeting of the men's branch of the Union Beneficial Society—about how long?

A. No, sir; I could not tell you how long it has been.

43 Q. Has there been a meeting of it within the last 15 years?

Mr. DARLINGTON: I object to the question unless some sort of legitimate knowledge is shown, and she has not testified that she belonged to it or had any real connection with it.

The WITNESS: I have no connection. I used to hear father say he was going to meeting, but I don't know how long it has been.

Q. Have you heard of their having held any meeting within the past 15 years?

Mr. DARLINGTON: I object to the question for the reason above stated.

A. I could not tell. I can't tell exactly. I don't know whether it has been within the last 15 years or not. I know my father used to go to meeting, but I could not tell exactly how long—my stepfather.

Q. How long is it since he had been in the habit of going out?

A. I don't think I could recollect. He has not been at a meeting for the last five years, and it may be longer than that. He has been

A. There were only a few of the old people living when they joined.

Q. Do you know when they joined?

A. I do not know.

Q. How can you tell that anybody was living if you do not know when they joined?

A. I don't know when they joined it.

Q. When did you first hear that Wilkinson and Middleton were members?

A. Well, it has been some five or six years ago; may have been longer.

Q. Who told you they were members when you first heard of it?

47 A. I heard my father say they had joined it—the old men's society—but how long ago I could not tell.

By Mr. COLE:

Q. Do you know what terms they took members on?

A. No, sir.

Q. All you know about it is what you have heard some others talk about?

A. That is all, sir.

The foregoing additional deposition of Elizabeth Simms is by stipulation of counsel signed by the examiner as on the first day of October, 1889.

JNO. CRUIKSHANK,
Examiner in Chancery.

MARTHA ROBINSON, being produced as a witness of lawful age for and on behalf of the complainant and being first duly sworn according to law, deposes and says as follows:

Direct examination.

By Mr. MACKEY:

Q. How are you related to Stephney Forrest?

A. A grand-daughter.

Q. You are the daughter of who?

A. One of his daughters, Betsey Wells.

Q. Did you know this man Becket that has been talked about here?

A. Yes, sir; I have known him for years, passing and repassing.

Q. Do you know how long it has been since this society ever held a meeting; the male branch of it?

A. No, sir; I could not tell you exactly how long it has been, but I think it has been a long time——

48 Mr. DARLINGTON: I wish to interpose an objection here.

The witness continuing: It has been inside of 15 years, don't you think (turning to another witness)?

Mr. MACKEY: Tell your own recollection of it.

Q. It has been inside of 15 years?

A. About 15 years, I think it has been, since the old man used to go back and forward.

Q. You only know it has been a long time?

A. It has been a long time.

Q. If they had held any meetings recently, would you have been apt to know it?

A. No; I don't think I would have known it, because we lived so far apart.

Q. Who has been in charge of this grave-yard for the past 15 years up to the time of his death?

A. Becket; he has been in charge of it.

Q. Who did the people go to when they wanted to bury anybody in the grave-yard?

A. Went to Becket.

Q. Who did they pay?

A. Paid Becket.

Q. Do you know what they paid him?

A. They paid for a grown person $5.00 and for a child $2.50.

Cross-examination.

By Mr. DARLINGTON:

Q. Who was your father?

A. My father's name was Edward Shorter.

Q. How long has he been dead?

A. He has been dead over 12 years.

Q. You are Mrs. Simms' sister?

49 A. Yes, sir.

Q. Are you older or younger than she?

A. I am the oldest child my mother had.

Q. How do you know there has not been any meeting of the society for 15 years?

A. I don't know any more than what I heard my father say. He never said anything about the time, but in my judgment I think it is about that time, sir.

Q. How do you fix the time as 15 years ago?

A. I have nothing at all to go by, but I know it has been a long time.

Q. Since what?

A. Since they had any meeting.

Q. How do you know when they had the last meeting?

A. I don't know when they had the last meeting.

Q. How do you know it has been a long time?

A. Because it has been a long time since I heard them say anything about it.

Q. May they not have had meetings you never heard of?

A. They may have had.

Q. You mean to say it has been a long time since you heard of them having any meetings?

A. Yes, sir; I could not tell how long exactly.

Q. Did you ever see anybody pay Becket any money for burying there?

A. No, sir; I never have seen any one pay Becket any money.

By Mr. MACKEY:

Q. If they had held any meetings recently, within the past 10 years, do you think it likely you would have heard of it?

Mr. DARLINGTON: I object to the question.

A. I guess I would have heard of it; heard my father say
50 they had a meeting such and such a time, because he was very anxious for a meeting for some time and could not get one.

Q. You mean by your father Philip Wells?

A. Yes, sir; he married my mother.

Q. Has he had his mind about him so he could tell things intelligently and sensibly?

A. Then he could, but now his mind goes and comes.

Q. Up to a year ago it was very good?

A. Yes, sir; very good.

The foregoing doposition of Martha Robinson is, by stipulation of counsel, signed by the examiner as of the first day of October, 1889.

JNO. CRUIKSHANK,
Examiner in Chancery.

For further testimony of Martha Robinson see page 57.

MARTHA M. LEE, a witness of lawful age, being produced for and on behalf of the complainant- and being first duly sworn according to law, testifies as follows:

Direct examination.

By Mr. MACKEY:

Q. How are you related to Stephney Forrest? You are one of the parties to this suit?

A. Yes, sir.

Q. How are you related to Stephney Forrest?

A. I am the grand-daughter.

Q. Who were your father and mother?

A. Henrietta Ross and Daniel Ross.

Q. She was the daughter of whom?

A. Stephney Forrest.

51 Q. Do you think you could from memory give all the names of the heirs of Stephney Forrest now living?

A. I think so.

Q. Name them.

A. Elizabeth Simms, Martha Robinson, Rebecca Shorter, Thomas Henson, Hebron Henson, Elizabeth Henson, Sophia Taylor, Martha Hopkins, the three children of Stephney Forrest, my uncle's chil-

dren, Rebecca, Henrietta, and George; Stephney Forrest died the 17th of July last, the son of Stephney Forrest, Sr.; and the daughter of Henrietta Ross—that is, myself.

Q. Who is Elizabeth Wells?

A. The daughter of Stephney Forrest.

Q. She is dead?

A. Yes, sir; I have called her children and grandchildren.

Q. Stephney Forrest married a second time, didn't he?

A. Yes, sir.

Q. Married whom?

A. A woman by the name of Rachael.

Q. Who is Mary J. Brooks?

A. A daughter of Stephney Forrest by his second wife.

Q. He had no other?

A. No other child.

Q. These are all the heirs of Stephney Forrest?

A. Yes, sir.

Q. Are there any others?

A. Mary Jane Brooks has got one child; that is all.

Q. What relation was Mary Brooks to Stephney Forrest?

A. A daughter.

Q. The children of Stephney Forrest that died last July you have just named?

A. They are the grandchildren of old Stephney Forrest.

Q. Stephney Forrest being his son?

52 A. Yes, sir.

Q. Sophia Taylor?

A. She is the daughter of Stephney Forrest.

Q. Thomas Henson?

A. Grandson—great-grandson.

Q. Elizabeth Henson?

A. Great-grand-daughter. They are the children of Nancy French.

Q. The three Hensons you have named are the children of Nancy French?

A. Yes, sir. She is the daughter of Elizabeth Wells.

Q. Is Nancy French living?

A. No, sir.

Q. Elizabeth Wells is dead?

A. Yes, sir.

Q. Elizabeth Wells was who?

A. A daughter of Stephney Forrest.

Q. Martha Robinson?

A. She is the daughter of Elizabeth Wells and grand-daughter of Stephney Forrest.

Q. Rebecca Shorter?

A. She is the same—a daughter of Elizabeth Wells and grand-daughter of Stephney Forrest.

Q. And sister of Martha Robinson and Elizabeth Simms?

A. Yes, sir.

Q. And their mother is dead?

A. Yes, sir.

Q. Now, Mrs. Lee, how long since this Union Beneficial Society—the male branch of it—has held a meeting, that you know of?

A. I have not heard of them holding a meeting for the last 10 years.

Q. If they had held a meeting within the past 10 years would you have been likely to know of it?

53 A. I would think so. The reason why I would hear of it is that Mr. Becket lived a few doors from where I lived, and he was sexton to the grave-yard. Philip Wells used to come down there repeatedly to see him on money matters and call a meeting, and he would not call a meeting. The way I come to know it is Philip Wells used to come to my house when he visited Mr. Becket to collect money. He would come in and tell us that he did not get any money.

Q. At that time how many members were there of that society?

A. I heard him say he and Mr. Becket were the only members of the society. They had all died out. My father was a member of that society.

Mr. DARLINGTON: Objection repeated as hearsay testimony.

Q. How long has your father been dead?

A. About 18 years.

Q. Do you know John Francis Wilkinson?

A. Yes, sir.

Q. Did you ever receive a visit from him?

A. I did.

Q. When was it?

A. The second Monday in July, 1888, in the evening.

Q. What did he come to see you about?

A. He came to see me about this burial ground and Grimshaw.

Q. What did he state to you?

Mr. DARLINGTON: Question objected to.

A. He said he wanted to know about the relationship of Stephney Forrest; that he had understood that Stephney Forrest had some children that he did not know and he wanted to know about it; that Grimshaw was attending to this grave-yard, and he wanted to find out the relations of Stephney Forrest—who was his relations.

Q. Did he tell you at that time who that grave-yard belonged to?

A. He did not. He said this: He said that he and Mr. Middleton were members of that society.

54 Q. Did he say anybody else had anything to do with that society except Mr. Middleton?

A. That is what he told me—he and Mr. Middleton.

Q. What was it he told you?

A. He said that he and Middleton were members of that society and that the burying ground belonged to them; that is what he told me.

Mr. DARLINGTON: All this objected to as incompetent and inadmissible testimony.

The foregoing testimony of Martha M. Lee is, by stipulation of counsel, signed by the examiner as of the first day of October, 1889.

JNO. CRUIKSHANK,
Examiner in Chancery.

Whereupon the session was adjourned to Tuesday, the 15th day of October, 1889.

J. C., *Examiner.*

For further testimony of Martha M. Lee see page 49.

In the Supreme Court of the District of Columbia.

HOPKINS
vs.
GRIMSHAW.

WASHINGTON, D. C., *Oct. 15th*, 1889.
TUESDAY, 2 P. M.

Met pursuant to agreement.
Present: Respective counsel, witnesses, also the examiner.

55 Whereupon AUGUSTUS BURGDORF, a witness of lawful age, being first duly sworn according to law, deposes and says as follows:

Direct examination.

By Mr. MACKEY:

Q. What is your name?
A. Augustus Burgdorf.
Q. You reside in Washington?
A. Yes, sir.
Q. Are you acquainted with Mr. William H. Grimshaw and Mr. Allen C. Clark?
A. Yes, sir; I know them both.
Q. Mr. Clark has stated in his testimony that you brought his attention to the property in suit here—square 1089.
A. Yes, sir; I did.
Q. And that you brought him and Mr. Grimshaw together?
A. Yes, sir.
Q. Will you state your recollection of that circumstance?
A. My recollection is that in about 1887, I think it was, Mr. Fletcher came to me and told me he had a square of land to sell.

Mr. COLE: I object to the declaration of Mr. Fletcher.

A. I was told there was such a square to be sold and that Grimshaw had the selling of it. I am not positive whether I went to Grimshaw or he came to me; I am not positive about that. I told Mr. Clark there was a reasonable profit in the ground to be purchased at a certain price, and Mr. Clark thought there might be some difficulty on account of there being graves there and it being a

burial ground, and I told him I could remove those bodies about as reasonable——

56 Mr. MACKEY: Never mind that. State what conversation you had with Mr. Grimshaw in reference to it.

Mr. COLE: I object to any conversation between Grimshaw and this witness.

Q. State what conversation you had with Mr. Grimshaw first in reference to this property and what the offer was, if he made any.

A. I think he asked me $8,000—something of that kind—but finally I bought it for Mr. Clark for $7,200, if my memory serves me right.

Q. Did he claim to own the property?

A. I asked about the title and he said it was good, and that he had bought the heirs out and trustees.

Q. Did he state who the heirs were?

A. I think he told me—I am not positive—that it was a Mr. Forrest—Stephney Forrest. I think he said Stephney Forrest was the original owner and that he had deeded it to trustees, or something of that kind, for a burial ground, and when it ceased to be a burial ground it would revert back to his heirs.

Mr. COLE: I make an additional objection to all the parts of the testimony of the witness as purports to be giving the contents of title papers.

Q. He told you that this property was conveyed by Stephney Forrest to certain trustees for the purpose of a grave-yard and when it ceased to be used for that it would revert to his heirs?

A. Yes, sir.

Q. Did he tell you who the heirs were?

A. I may be mistaken, but I have a faint recollection it was his sister-in-law or his mother-in-law. I may be off on that. I don't remember distinctly, but to my best belief I think that is what he told me, his sister-in-law or mother-in-law.

Q. Did he state whether or not he had obtained their titles to the property?

57 A. Yes, sir; he told me he bought their title.

No cross-examination by Mr. Cole.

The foregoing deposition of Augustus Burgdorf is, by stipulation of counsel, signed by the examiner as of the 15th day of October, 1889.

JNO. CRUIKSHANK,
Examiner in Chancery.

MARTHA LEE recalled.

By Mr. MACKEY:

Q. In the testimony you have given naming the children and grandchildren of Stephney Forrest I want to ask you if you have named all those whose parents are dead.

A. I have.

Q. Has Stephney Forrest any other children or grandchildren living, or great-grandchildren, than those whom you have named?

A. He has, but their mothers are living.

Q. Their parents are living?

A. Their mother is.

Q. How about the father?

A. Their father is dead.

Q. Who is that?

A. Mary Jane Brooks. She is a daughter of Stephney Forrest and she has a son living, but she is living, and I did not call her son's name because she is living. Sophia Taylor has a daughter living, but Sophia Taylor is a daughter of Stephney Forrest and she is living.

The foregoing additional deposition of Martha M. Lee is, by stipulation of counsel, signed by the examiner as of the 15th day of October, 1889.

JNO. CRUIKSHANK,
Examiner in Chancery.

58 MARY ATCHISON, being produced as a witness of lawful age for and on behalf of the complainants and being first duly sworn according to law, deposes and says as follows:

Direct examination.

By Mr. MACKEY:

Q. State your name and residence.

A. Mary Atchison.

Q. You reside in Washington?

A. Yes, sir; on 11th street S. E.

Q. Give your age.

A. 42.

Q. Were you a member of the female branch of the Union Beneficial Society?

A. Yes, sir; I was a member of it.

Q. Were you an officer of it?

A. Yes, sir.

Q. What office did you hold?

A. Secretary.

Q. This book which I hold in my hand, what is it—is it the minutes of the society?

A. Yes, sir; there was another book, but I don't know what has become of it.

Q. These were the minutes of the society in 1886, when it dissolved?

A. Yes, sir.

Mr. Mackey, counsel for the complainants, here marks for identification the book identified by the witness, and it is agreed between counsel that it may be read and referred to upon the hear-

ing of this cause, subject to all exceptions as to its competency, and it is offered in evidence and marked Exhibit M. A. No. 1, J. C., examiner.

Q. I want to call your attention to this entry: "The
59 daughters of the union met their regular stated meeting May 3d, 1886, Sister Mary Robinson, president, in the chair. The meeting was opened in order with prayer. First in order the pay-roll was called; received as monthly dues the sum of $7.00, after which it was, on motion, resolved this society dissolve and join the Daughters of Zion, which was carried unanimous, eleven members present, after which the money in the treasury was counted.

Sum in hand	$198 00
Received	7 00
Sum total to date, inclusive	$205 00
Paid for 12 members to join the Zions	72 00
Paid for 12 members' one-year dues at $3.00	36 00
	$108 00"

Q. By whom was this entry made?
A. That was made by my daughter Julia.
Q. Was it made at your direction?
A. Yes, sir; I was not at the society; I sent her to go in my place; I did not go often and she could act in my place.
Q. As secretary *pro tem.*?
A. Yes, sir.
Q. The first part of this entry appears to be in different handwriting, or at least in different ink, from the latter. Do you know whether this part in the different ink was written at the same time the first was?
A. I could not tell you, sir.
Q. Did the meeting dissolve at that time? Did the society dissolve at that time?
A. I suppose it did.
Q. Were you not a member of it?
A. Yes, sir.
Q. Did you go into the Daughters of Zion?
A. No, sir; I did not.

Cross-examination reserved.

60 The foregoing deposition of Mary Atchison is, by stipulation of counsel, signed by the examiner as of the 15th day of October, 1889.

JNO. CRUIKSHANK,
Examiner in Chancery.

MARTHA ROBINSON recalled.

By Mr. MACKEY:

Q. I will ask you does this entry I have just read to Mrs. Atchison contain a correct statement of what occurred at the meeting of the society on the evening of May 3d, 1886.

A. It does.

Q. You were the president of the society, were you not?

A. I was.

Mr. MACKEY: I here offer this book in evidence and mark it "Exhibit M. A. No. 1."

Mr. Mackey, the counsel for the complainants, offers in evidence copies of the following deeds, it being stipulated between counsel that the said copies may be read in evidence with the same force and effect as if they were originals, subject, however, to any objection on account of imperfection of the copy, if such can be shown, viz: Copies of deeds from the parties described in the 15th paragraph of the bill to Horace Cummings, trustee; also a copy of a deed from Brook and Clark, Jr., trustees, to Allen C. Clark, recorded in Liber 1384, folio 151; a copy of deed from A. Wayne *et al.* to William Grimshaw, recorded in Liber 1326, folio 341; a copy of a deed from Levi Hurdle to Stephney Forrest, recorded October 27th, 1838, in Liber ——, folio —; a copy of a deed from Tetresa Chew to Wm. H. Grimshaw, recorded in Liber 1276, folio 305; copy of a bill of sale from Stephney Forrest to Sophia Taylor, recorded August 2d, 1853, in Liber ——, folio —; a copy of a deed from Stephney Forrest to David Redden *et al.*, recorded in Liber W. B. 121, folio 251 (Record, p. 163); a copy of a deed from David
61 Reddin *et al.* to James Lodge, trustee, recorded in Liber W. B. 140, folio 261; a copy of a deed from United States commissioner to Stephney Forrest, recorded in Liber W. B. 121, folio 250 (Record, p. 161); a copy of a deed from Rachel Forrest *et al.* to Wm. Grimshaw, Lib. 1276, folio 304; a copy of a deed from Jeremiah Simms to Wm. H. Grimshaw, recorded in Liber 1276, folio 307; a copy of a deed from Wm. Grimshaw to Allen C. Clark, Liber 1273, folio 341.

Counsel for the complainants here states that he will hereafter offer in evidence copies of other deeds referred to in the bill in this case as soon as the same can be made, and it is agreed between counsel that the same may be done, and that the foregoing stipulation shall apply to the said deeds equally as to those already offered in evidence.

Under the foregoing stipulation counsel for plaintiffs offers in evidence copy of a deed from Allen C. Clark and wife to William H. Grimshaw, dated 10th day of April, 1889, and recorded in Liber 1387, fol. 39.

The copies referred to are filed and marked by the examiner Exhibits Pl'ff- Nos. 2 to 15, inclusive.

Cross-examination by Mr. DARLINGTON:

Q. When was this meeting held which is referred to?
A. It was held at our last meeting.
Q. Do you know when that was?
A. I can't tell now when that was.
Q. Do you know what month it was in?
A. I do not know. I did not notice.
Q. Do you know what year it was in?
A. No, sir; I do not know what year it was in.
Q. How many persons were there present?
A. Nine.
Q. Who was the president?
62 A. I was president, sir.
Q. Who was the secretary?
A. Mary Atchison.
Q. When did you first hear this item read?
A. I heard it read at the meeting. I have not heard it read since excepting looking over the book.
Q. How do you know you heard it read at the meeting?
A. Because I was there when it was read.
Q. The minutes that were read were the minutes of the last meeting, was it not?
A. Yes, sir.
Q. You never had any meeting after it?
A. Never had that read in meeting. I never heard that read.
Q. What was done at that meeting?
A. There was not anything done excepting taking in the money when it was turned over to the Daughters of Zion.
Q. How do you know it was turned over to the Daughters of Zion?
A. That is what they said—to turn over to the Daughters of Zion.
Q. You don't know whether it was done?
A. I knew it was done, because we had a meeting of the Daughters of Zion to that effect, and the next meeting we paid our money in the Daughters of Zion.
Q. You took in some money at this meeting, did you?
A. Yes, sir.
Q. How much money did the old society have altogether?
A. We had one hundred and some odd dollars in the treasury.
Q. Was that all the property the old society had?
A. That was all after we lost the grave-yard.
Q. What grave-yard did you lose; how did you lose it?
A. It was called the female burying ground.
Q. Where was that?
A. That was out towards the navy yard.
Q. What streets was it between?
63 A. I don't know the streets now. At that time there was no streets.
Q. How did you lose that?

A. Because we could not bury in it. We filled it up so we could not use it.

Q. You filled it up with people?

A. Yes, sir.

Q. Didn't you pay for burying there?

A. Outsiders did. The society did not, no more than for the digging of the graves.

Q. Who did you pay it to?

A. Paid to Mr. Brown. He was our overlooker.

Q. When did you lose the grave-yard?

A. I could not tell you how long it has been.

Q. How do you say you lost it?

A. Because it was filled up and we could not use it.

Q. You all dissolved and went into the Daughters of Zion?

A. Yes, sir.

Q. How many members did the female Daughters of the Union have?

A. We only had nine. They all died out until we only had nine

Mr. DARLINGTON: I reserve the right to further cross-examine.

Redirect examination.

By Mr. MACKEY:

Q. What grave-yard are you speaking of that you say you lost—this grave-yard that you are suing about?

Mr. DARLINGTON: I object to that question.

Q. Or is it a different one—a different *a* grave-yard from the one that Becket is said to have control of?

A. It was divided—the ground was divided.

Q. Was it all in the same square?

64 A. All in one square, but they consisted of males and females; one side of it was for males and the other for females.

Q. This grave-yard that you speak of, or these two grave-yards, were they all in the one square?

A. Yes, sir.

Q. Well, how was it used for burial, females in one side and males in the other; is that what you mean to say?

A. No, sir; I only mean to say that one side had possession more than the other.

Q. State how it was used.

A. One side was called Becket's ground and the other side was called the Sisters' ground. The Sisters buried in their ground who they chose, whether male or female; so did Becket.

Q. The whole ground, you say, you lost was in the same square with Becket's ground, was it?

A. Yes, sir; it was in the same square, but we did not use his side at all; we had nothing to do with that side.

Q. Who were buried in that side, male or female—Becket's side?

A. Both; just as he chose, male or female.

Q. The members of your society were *mar*ried in a different portion?

A. No, sir; we buried all the same, males and females.

Q. In a different portion from his?

A. Yes, sir; we had nothing to do with Becket's ground; nothing at all.

Q. How much did Becket's ground occupy of the square?

A. I could not tell you, sir.

Q. Half of the square?

A. I do not know that; whether it did or not.

Q. How much did your ground occupy of the square?

A. I did not take particular notice of it. I could not tell you.

Q. Was anybody else in the square besides your ground and Becket's ground?

65 A. No, sir.

Q. Was the whole square occupied by the grave-yard?

A. Our side was.

Q. And the rest of it was occupied by Becket's?

A. Yes, sir.

Recross-examination.

By Mr. DARLINGTON:

Q. Did streets run there then?

A. No, sir; they were not run there then.

Q. How do you know both these burial grounds were in the same square if there were no streets to divide the square?

A. Because streets run each side now.

Q. What streets now bound your grave-yard? Name them.

A. I could not tell you the name of the streets. I go out there so seldom that I don't know the names of the streets.

Q. What streets bound Becket's grave-yard?

A. I could not tell you; the main street straight down.

Q. Do you know whether the same streets bounds his that bounds yours?

A. No, sir.

Q. How near South street does your ground lie?

A. About one or two squares, I guess, from the street.

Q. What street?

A. South street.

Q. The street runs the south side of your grave-yard?

A. Yes, sir.

Q. Was it not nearer that street than the street on the north side of it?

A. I don't know how it was.

Q. Where did you get your burial ground?

A. That was bought long before I was here.

66 Q. You don't know?

A. I do not know about the buying of it.

Q. You don't know whether it was bought at all?
A. I do not know.

The foregoing additional deposition of Martha Robinson is, by stipulation of counsel, signed by the examiner as of the 15th day of October, 1889.

JNO. CRUIKSHANK,
Examiner in Chancery.

REBECCA MITCHELL, a witness of lawful age, being called for and on behalf of the complainants and being first duly sworn according to law, testifies as follows:

Direct examination.

By Mr. MACKEY:

Q. What is your name?
A. Rebecca Mitchell.
Q. You are the daughter of whom?
A. Of Catherine Taylor.
Q. Is she dead?
A. No, sir.
Q. Was your mother a member of this female society that has been spoken of here?
A. My grandmother was, Sophia Taylor.
Q. Do you know the location of the grave-yard that has been spoken of?
A. Yes, sir.
Q. In which they bury members of that society?
A. Yes, sir.
Q. Just tell how it was located and all about it.
A. The women's branch of the beneficial society was on
67 the south of the square 1089 and "D" street on the south. "C" street was on the north, and on the east is 16th street and on the west 15th street.
Q. "D" street is on the south?
A. Yes, sir: "D" street is on the south.
Q. How did they bury there?
A. Well, the women members of the society they only paid for the attending of the grave, and then if any one else wanted to bury there they had to pay individually for burying there.

By Mr. DARLINGTON:

Q. Do you know that?
A. I have bought graves there.
Q. You did not belong to the society?
A. No, sir; my grandmother did, and I had to look out for her after she got feeble.
Q. What did you do for her; did you buy a grave for her?
A. No, sir.
Q. What did you do for her?
A. Paid in the money for her, etc.

Mr. DARLINGTON: I object to the evidence of this witness.

By Mr. MACKEY:

Q. The females buried in the northern portion?
A. Well, we buried in there; it was a matter of choice.
Q. And the male members buried in the other side?
A. It was a matter of choice where we buried.

Whereupon the session was adjourned.

Mr. DARLINGTON: I reserve cross-examination.

68 Mr. MACKEY: I here give notice that the testimony for the complainants is closed.

The foregoing deposition of Rebecca Mitchell signed by examiner, as by stipulation of counsel, as of the 15th day of October, 1889.

JNO. CRUIKSHANK,
Examiner in Chancery.

It is stipulated by counsel that after the foregoing depositions shall have been written in long-hand from the stenographic notes they may be signed by the examiner in the place of the witnesses, respectively.

JNO. CRUIKSHANK,
Examiner in Chancery.

Oct. 15, 1889.

69 *Defendants' Depositions.*

Filed April 14, 1890.

In the Supreme Court of the District of Columbia.

HOPKINS *et al.*
vs.
GRIMSHAW *et al.* } Equity. No. 11824.

DISTRICT OF COLUMBIA, }
County of Washington, } *ss:*

Be it remembered that at an examination of witnesses begun and held on the 13th day of November, A. D. 1889, and continued from time to time until the 27th day of December, A. D. 1889, when the within depositions were taken, I, Irvin B. Linton, an examiner in chancery, did cause to be personally present at No. 410 5th St. N. W., in the city of Washington, in said District, the within-named Wm. H. Grimshaw, Mary J. Brooks, Rachel Forrest, John F. N. Wilkinson, Samuel H. Middleton, and Frank J. White to testify on the part and behalf of the defendants in the above-entitled cause.

And I do hereby certify that in pursuance of notice from counsel for the defendants the annexed depositions were taken down and by me reduced to writing in the presence of and from the statements of the several witnesses at the time and place herein desig-

nated and were by me read over to the witnesses and by them subscribed in my presence, the witnesses having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for either of the parties to said cause or in any manner interested therein.

IRVIN B. LINTON,
Examiner in Chancery.

Washington, D. C., April 12th, 1890.

70 *Testimony on Behalf of the Defendants.*

In the Supreme Court of the District of Columbia.

HOPKINS *et al.* *vs.* GRIMSHAW *et al.* } No. 11824, Equity Docket.

WEDNESDAY, *November* 13*th*, 1889.

Met pursuant to notice at 410 Fifth street.

Present: Franklin H. Mackey, Esqr., for complainants, and J. J. Darlington and Wyman L. Cole, Esquires, for the defendants.

WILLIAM H. GRIMSHAW, one of the defendants in this cause, being first duly sworn, deposed and said as follows:

Examined by Mr. DARLINGTON:

Q. State your name, residence, and occupation.

A. William H. Grimshaw; employed at the Brooklyn navy yard, New York.

Q. You are a defendant in this cause?

A. Yes, sir.

Q. What interest do you claim in the north half of square numbered 1089—what is the nature of the interest you claim?

A. I claim as the trustee for the Union Beneficial Society.

Mr. MACKEY: I object to the question on the ground that the deeds themselves will show the interest which he claims, and it is inadmissible to offer parol evidence to vary the effect of the deeds under which the defendant claims the property in question.

Mr. DARLINGTON:

Q. Mr. Allen C. Clark, who has testified as a witness for the
71 complainant in this cause, has stated that you had certain negotiations with him in regard to this square, and that you then claimed to be the owner of it yourself. What have you to say in regard to that?

A. No question ever arose between Mr. Clark and I as to the ownership, the title being perfect in me as trustee for the Union Beneficial Society.

Q. Did he ever inquire of you whether you held the property for yourself or for others?

A. No, sir.

Q. No question arose between you?

A. No, sir; not as to that at all.

Q. Mr. Clark further states that certain notes for the deferred purchase-money, which he had given to you, were subsequently, at his suggestion, placed in escrow. Will you state why that was done?

A. Mr. Clark said to me that he did not believe the title was perfect, and all I said in reply was I would refund his money if he did not desire to take it.

Q. After he had bought the property and had given you the notes he became dissatisfied and you then agreed to put the notes in escrow until he could examine the matter further?

A. Yes, sir.

Q. What difficulty did he claim existed in regard to the title?

A. He notified me about June, 1888, that one Hopkins and others had filed a bill selling the ground to one Cummings, and I told him I knew nothing as to these parties whatever, but, however, I would not insist on his taking the property at all. That is the first intimation I had of any difficulty at all; never heard of anything.

Q. What defect in the title did he mention, if any?

A. He mentioned none, only this: We had a talk, and he said that these people throwed a cloud over it, so it would be well to get this removed.

Q. He says in his deposition something about the property having been conveyed as a cemetery and a doubt as to its sale for any other purposes?

A. That he talked of in a general way by its being held by the trustees that he was in doubt whether it needed an act of Congress, but he thought so.

72 Q. He states in his deposition that you were in the habit of bringing deeds from sole heirs and sole-surviving trustees in such number that he questioned the truth of your deeds and told you that your deeds were false or he believed that there were others. Is that true?

A. No, sir; in my hearing he never questioned any deed whatever.

Q. I find that you did obtain a deed from one Jeremiah Simms, stated in the deed to be the only heir of Daniel Simms, deceased. Have you any statement to make in regard to that?

A. On getting authority from the association to sell the property and perfect the title in myself I hunted up the heirs of Daniel Simms, and knowing Jeremiah Simms for a number of years I saw him, and he told me that he was the only surviving heir of Daniel Simms, and the deed was so made out. After the deed had been made out I found out that there were seven children of Daniel Simms living, and after hunting through the city here—they are all living here—I found them, and we procured another deed from them to correct the deed from Jeremiah Simms—to perfect that deed.

Q. The only other deed from alleged surviving heirs, I find, is

one from Teresa Chew, claiming to be the only heir-at-law of James Lodge, deceased.

A. Mrs. Teresa Chew claimed to me to be the only surviving heir of James L. Lodge, his only sister, who was one of the trustees for the Navy Yard Sons of Union, and she claimed to be the only heir, and on finding that that was not a fact, that one of the original trustees was living in the South, I found him in the person of James Haines and brought him to Washington and procured from him as the only surviving trustee to perfect that part of the title.

Cross-examination.

By Mr. MACKEY:

Q. Why did you go to Mr. Clark to sell him this property?

A. I did not go to Mr. Clark.

Q. Well, how did you come to sell the property to Mr. Clark?

A. In fact I do not know that I might answer that I sold
73 the property to him at all. In the first place, after Mr. Burgdorf heard I had the property he came to see me several times and offered, I think, seventy-two hundred dollars for it, with the understanding that that seventy-two hundred dollars should be clear, he bearing all expenses of clearing it out and perfecting it, and I agreed that he should have it.

Q. I did not ask that. What was your purpose in selling the property to Mr. Clark?

A. As I said, I don't know that I sold it to Clark at all. My dealings were with Burgdorf, not with Clark.

Q. Did not you make a deed to Clark?

A. Yes, sir; I signed a deed, but it was done through Mr. Burgdorf.

Q. In making that deed to Mr. Clark?

Mr. DARLINGTON: Objected to as wholly irrelevant to any issue in this cause, but for no other reason.

A. My purpose was to secure Mr. Clark and to receive the money for it for the use of the two societies that were then in existence—for the Union Beneficial Society; that is all.

Q. What did you expect to do with the money that you got from Mr. Clark?

Mr. DARLINGTON: Objected to.

A. Turn it over to the Union Beneficial Society.

Q. What was the Union Beneficial Society to do with it?

A. Because the ground belonged to them.

Q. What was the Union Beneficial Society to do with the seventy-two hundred dollars which you were to get from Mr. Clark?

Mr. DARLINGTON: Objected to, 1st, because it is wholly immaterial and incompetent here, and, secondly, because that is a question for the Union Beneficial Society to answer; thirdly, because it does not appear that this witness was even a member of that society.

A. I do not know what use they would make of it.
Q. Were you to turn it over to that society?
A. Yes, sir.
Q. To whom?
A. To members who were living.

Q. Was there some committee or trustees that you were to
74 hand it over to?

A. The money was to be turned over to the Union Beneficial Society when the sale was completed, and they were to receive the money.

Q. How many members of the society were there at that time?
A. I cannot exactly tell.
Q. About how many?
A. It has been over two years. At one meeting there were some seven or eight connected with it. I cannot tell now.
Q. Didn't you know who the members were?
A. I knew some of the members.
Q. Who were you to turn the money over to; these members?
A. The members of the society.
Q. To divide it up among them?
A. They were to divide it themselves.
Q. Who were you to give the money to?
A. The secretary and treasurer of the society at a meeting called for the purpose.
Q. You were to pay the seventy-two hundred dollars to the secretary and treasurer of the society?
A. Wherever the society might designate it to be put; that was a question for them.
Q. You don't know what was to be done with the money?
A. No, sir.
Q. And you did not know, when you got it, what persons you were to pay it to?
A. To the society.
Q. Did you know who the members were?
A. Knew some of them.
Q. You knew some, but not all?
A. I cannot say I knew all.
Q. Do you know about how many members there were?
A. About seven or eight. I don't know precisely.
Q. How much money did you get from Mr. Clark?
A. I got in the neighborhood of about, I think, fifteen hundred dollars; something like that. I am not certain without referring to my papers.
Q. What did you do with that money?
A. Well, I don't know as to whether I have a right to answer what I did with it.

75 Q. Did you give it to the members of the society?

Mr. DARLINGTON: Question objected to and witness advised not to make answer to it.

Q. You decline to tell what you did with it?

A. Yes, sir; with my own personal money.
Q. Was that fifteen hundred dollars a personal affair of yours?
A. I should think so.
Q. The society had nothing to do with that?

Mr. DARLINGTON: I object to that on the ground that it is not the society that is making the inquiry here as to what the witness did with that money, but a parcel of outsiders.

Q. You say the society had nothing to do with that?

Mr. DARLINGTON: Objected to because the witness said nothing of that sort.

Q. Did the Union Beneficial Society have anything to do with that?

Mr. DARLINGTON: Objected to because it does not bear upon any issue in this cause.

A. I answer no. The Union Beneficial Society had nothing to do with it.
Q. Was there any other society that had anything to do with it?

Mr. DARLINGTON: I object to answering any questions excepting those bearing directly upon the question at issue—that is, the north half of that square.

Q. You decline to answer that question?
A. Yes, sir.
Q. What were your instructions from the society in respect to selling?

Mr. DARLINGTON: Objected to, and the witness is advised that it is not necessary to answer that question, as it has no bearing whatever upon any issue in the cause.

Q. (Continuing:) In regard to selling this property and what you were to do with this purchase-money?

A. To sell it according to law and when it was sold that
76 the money was to be distributed among those who were justly entitled to it.

Q. Did you have any written instructions?
A. I had a written order from the Union Beneficial Society to perfect the title and make sale.
Q. Have you got that written order?
A. I have.
Q. Do you object to showing it?
A. I think my attorney has that order.

Mr. DARLINGTON: The attorney objects on the ground that it is wholly without competency to the issue of this cause, which is whether the heirs of the original grantor of this property are entitled to reclaim it on the ground that it is no longer used for the purposes of a cemetery; that being the sole issue, counsel are constrained to confine the testimony to it.

Q. Did you ever tell Mr. Clark, before you made the conveyance to him, that you were a trustee for the Union Beneficial Society?

A. I do not remember of Mr. Clark and I having any conversation as to what my position was in the case.

Q. Did you ever tell that to Mr. Burgdorf?

A. No, sir; Mr. Burgdorf never asked me, either.

Q. Who did you give Mr. Burgdorf to understand owned the property?

A. The Union Beneficial Society.

Q. You told him that the Union Beneficial Society owned it?

A. Yes, sir; Mr. Burgdorf went by the abstract.

Q. Did you explain to him how you got the title in your name?

A. Mr. Burgdorf understood it by the abstract of the title company. I never told him anything.

Mr. MACKEY: I will have to defer the further examination of this witness until tomorrow, so that I can confer with my associate and my clients.

(See continuation, page 26.)

77 *Deposition of Mary J. Brooks.*

MARY J. BROOKS, being first duly sworn, deposed and said as follows:

Examined by Mr. DARLINGTON:

Q. Your name is Mary J. Brooks?

A. Yes, sir.

Q. Where do you live?

A. I live on South Carolina avenue, No. 321, S. E., in this city.

Q. How old are you?

A. Sixty-eight years.

Q. Who was your father?

A. Stephney Forrest.

Q. And your mother?

A. Rachel Forrest.

Q. Do you know anything about the purchase by your father of the ground in which the Union Beneficial Society had their cemetery for some years?

A. Yes, sir; my father bought it for the Union Beneficial Society.

Mr. MACKEY: One moment; I object to any evidence of the witness except such as may be upon her own knowledge.

Mr. DARLINGTON:

Q. How do you know that he did?

A. I heard him say that he was going to buy it for the society, and he left home and went to the secretary and got the money.

Q. Secretary of what?

A. Of the beneficial society.

Q. He told you he was going to buy the property for the society?
A. Yes, sir.
Q. That he was going to the secretary to get the money?
A. Yes, sir.
Q. Did you see him afterward with the money?
A. No, sir; I was at school when he came back.
Q. You did not see that?
A. No, sir; but my mother did.
Q. You heard him say that he was going to the secretary of the society to get the money to buy it for the society?
A. Yes, sir.
Q. That is all you know about it?
78 A. That is all I know of my own knowledge. He bought it for the society. I was thirteen or fourteen years old. I was going to school. He went away in the morning and nine o'clock was, of course, the school hour.

Mr. MACKEY: I object to this method of proving a trust.

Cross-examination.

By Mr. MACKEY:

Q. How old were you then when you heard your father say this?
A. About fourteen.
Q. Where were you living then?
A. The same place as now—South Carolina avenue.
Q. Who constituted the members of his family at that time?
A. I was the only child who lived with him in the house; the rest of the children are his first wife's children; I am the only daughter of Rachel Forrest—the only child. The rest of those heirs never lived with my father in my time.
Q. What relation are you to the defendant Grimshaw?
A. I am no relation to him, only he married my daughter.
Q. Then you are his mother-in-law?
A. Yes, sir.
Q. Did he live at your house at any time?
A. Yes, sir; he lived there at one time.
Q. How long?
A. It has been about five years since he lived at my house.
Q. How long was he living at your house?
A. Two or three years.
Q. Then he moved next door to you?
A. Yes, sir; when he married my daughter. My daughter died and then he lived at my house, with me.
Q. And he lived next door to you the first three or four years?
A. Oh, no; he lived right next door to me in the first three or four years, but after his wife died then he lived in my house.
Q. Let us get that clear. First he lived next door to you while your daughter was alive, living with her as her husband in the adjoining house; then your daughter died how long ago?
A. Five years.
79 Q. Since then he has been living with you?

A. Not all the time.

Q. How much of that time has he been living with you?

A. I think he has been living with me—I cannot exactly say—about two or three years.

Q. Was he living with you up to the time he went to Brooklyn?

A. O, no, sir.

Q. Where was he living then?

A. He was living at another place, on B street.

Q. How long since he left you?

A. Five years since he left my house.

Q. Has not lived with you during the past five years?

A. No, sir.

Q. When did he marry your daughter?

A. I do not remember the year he married her.

Q. Have you any idea about how long ago?

A. I forget the year he married her.

Q. Have you any idea about how long ago it was that he married your daughter?

A. About ten or eleven years.

Q. You signed the deed for Mr. Grimshaw, didn't you, conveying your interest in this property to him?

WITNESS: Deed?

Q. Yes; didn't you sign a deed conveying your interest in this property to Mr. Grimshaw?

WITNESS: In the burying ground?

Q. Yes.

A. I think I did.

Q. What did he pay you for signing that deed?

A. Didn't pay me anything.

Q. What did you sign it for?

A. He was making out the paper and asked me to sign it. I didn't get anything for it.

Q. He paid some of the others who signed it, didn't he?

A. I don't know anything about it.

Q. Never heard?

A. No, indeed, I never heard.

80 Q. Never heard a word about his paying other people?

A. I am a person who attends to my own business and never mind other people's business.

Q. Was the complaint made to you that Grimshaw was paying out this money to other people and not to those who ought to get it?

A. No, sir; I didn't hear any complaint.

Q. Did you claim any interest in this property—this grave-yard?

A. I don't claim any interest; no more than it was a site of ground that my father deeded to my husband, Basil Brooks.

Q. A grave-yard site; that is all the interest that you claim in it?

A. Yes, sir.

Q. Were you a member of this Union Beneficial Society?

A. Yes, sir; at one time I was.
Q. How long ago?
A. About thirty years ago, I reckon; I don't know.
Q. Twenty or thirty years ago?
A. I don't know; I lost my membership.
Q. Why did you quit?
A. Finances gave out.
Q. Your finances?
A. Well, the society broke up.
Q. And then you ceased to be a member?
A. Yes, sir.
Q. Which society did you belong to, Mrs. Brooks?
A. I belonged to the female society. I did not belong to this north side.
Q. To the south side?
A. Yes, sir.

Mr. DARLINGTON:

Q. Mr. Mackey has asked you some questions about the persons he calls the "other heirs." Do you know whether their mother was married to your father or not?
A. It was in slave times and my father's children were all slaves. I don't know anything about these heirs.
Q. You don't know whether they are lawful heirs or not?
A. No, sir; I know I am a lawful heir, but as to them I know nothing about them.

Mr. MACKEY:

Q. Did you know any of the male members of this society?
A. I did know some of them; they are most all dead.
81 Q. Who were some of the male members?
A. Richard Middleton was one.
Q. Know any others?
A. David Redding was one; he is dead.
Q. He has been dead a long time, hasn't he?
A. Yes, sir.
Q. The fact is they are most all of them dead?
A. Yes, sir.
Q. Do you think there are two or three living?
A. I cannot tell you, sir.
Q. Middleton is the only male member that you know?
A. That I know of.

MARY J. BROOKS.

Subscribed and sworn to before me this twentieth day of November, A. D. 1889.

IRVIN B. LINTON,
Examiner in Chancery.

RACHEL FORREST, being first duly sworn, deposed and said as follows:

Examined by Mr. DARLINGTON:

Q. What is your name and residence?
A. My name is Rachel Forrest.
Q. Where do you live?
A. I live on South-Carolina avenue between Third and Fourth streets.
Q. How old are you?
A. I am eighty-five years old.
Q. Who was your husband?
A. Stephney Forrest.
Q. When were you married to him? Do you know the date of your marriage?
A. I don't know the date.
Q. You were married regularly?
A. Yes, sir.
Q. Who performed the ceremony?
A. Rev. Mr. Cartwright; he lived in Georgetown.
Q. Do you know anything about the purchase by your husband of the north half of square 1089, subsequently used for burial
82 purposes for the Union Beneficial Society?

Mr. MACKEY: I object to the question on the ground that this witness, being the admitted wife of the deceased Forrest, is incompetent to testify as to any statement made to her by her husband or to any matters the knowledge of which was acquired by her by reason of her marriage relation to the deceased.

A. I know he bought it for the society.
Q. How do you know that?
A. Because he told me, sir, that he was going to buy it and I saw him have the money to go to buy it with.
Q. Do you know where he got the money?
A. He got it from the society.
Q. How do you know that?
A. Because he told me that he was going to get it; that is the only way I know it. He told me he was going to purchase the burial ground for the society and was going to get the money from the society.
Q. Do you remember the day he said he bought it?
A. I remember the day; it was on a Monday that he bought the ground.
Q. Just tell us what took place that day.
A. Nothing took place except that he bought the ground, and when he had bought it he came back and told me that he had purchased the ground for the burial.
Q. What was the first thing he said to you that day about it?
A. Before he got it?
Q. Yes.
A. He told me in the morning that he was going to buy this

burial ground for the Union Beneficial Society, got his breakfast and went and got the money and came back as he was going to buy it. That is about all. Of course my recollection is poor, but these things I never forgot.

Q. You say that he told you early in the morning that he was going to get the money and buy the ground with it?

A. Yes, sir.

Q. And after he got his breakfast he said he was going to get the money?

A. Yes, sir.

Q. Did you see the money?

83 A. I didn't see the naked money, but I saw the handkerchief which he said had the money in it.

Q. He showed you the bundle which he said contained the money?

A. Yes, sir.

Q. Then he went off and afterwards told you that he had bought it?

A. Yes, sir.

Q. Did he tell you what he had bought it for—for the male society?

A. I knew that he bought it for them.

Q. Did he say anything about ground for the female society?

A. He hadn't anything to do with it.

Q. Did he say anything about it?

A. He might have said that Wallace had got ours, but I don't remember anything about it. They both were bought that day, but he didn't buy for the women, but for the men. Israel Wallace bought for the women.

Q. And that was about the same day?

A. Yes, sir. I didn't go out to see the ground, but I knew it was bought that day. I was a member of the female society.

Mr. MACKEY: We agree that all the deeds that are referred to in the testimony and in the pleading or copies may be filed in evidence.

Mr. DARLINGTON: Counsel for defendant here states that he will file certified copies of the deeds of William Noland, commissioner of public buildings, to Stephney Forrest, dated August 9th, 1845, recorded October 21st, 1845, in Liber W. B. 121, folio 250, of lots 9 to 18, in square 1089 (Record, p. 161), and also a certified copy of a deed from William Noland, commissioner of public buildings, to Israel Wallace, dated August 9th, 1845, recorded in Liber W. B. (Record, p. 168)
121, folio 67, of lots 1 to 8 and lots 19 and 20, in square 1089 (Record, p. 168).

Cross-examination:

Mr. MACKEY: I want to state right here that counsel for the complainant inform the counsel for the defendants that they will
84 at the proper time move the court to strike from the record all portion of the testimony of this witness which pretends or

Q. But Mr. Mackey wants to know how we found out that you knew anything about it.
A. I don't know how you found out.
Q. You don't remember ever talking to Grimshaw about it?
A. No, sir; we never had any talk about it.

Mr. MACKEY:

Q. Didn't you talk to Mr. Darlington about it?
A. I don't know who Mr. Darlington is.
Q. This gentleman here (indicating Mr. Darlington, of counsel for the defendants).
A. I only answered the questions that were asked me.
Q. You have never spoken to him about it before today?
A. No, sir.
Q. Not before you took your seat a few moments ago?
A. No, sir.
Q. Did you speak to any one about this matter before you took your seat here a moment ago?
A. No, sir.

Mr. DARLINGTON:

Q. Where were you sitting, Mrs. Forrest, when you first told me about it—in what part of this room—here this morning?
A. Yes, sir; over there (pointing to the back of the room).

Mr. DARLINGTON:

Q. I talked with you a few moments before Mr. Mackey came in?
A. Yes, sir; that is the only statement I ever made.

Mr. MACKEY:

Q. You never told this to Mary Brooks?
A. No, sir.
Q. Never told Grimshaw?
A. No, sir; never had any occasion, because they knew it.

Mr. DARLINGTON:

Q. Mr. Grimshaw never spoke to you about it?
86 A. No, sir.

Mr. MACKEY:

Q. You made a deed to Grimshaw of this property, did you not?
A. No, sir.
Q. Did you sign a deed to Grimshaw?
A. I signed something, but I don't know what it was.
Q. Did he tell you what it was?
A. No, sir; he said he had some papers that he wanted me to sign, and my daughter signed and I signed, but I did not know what it was, because I cannot read writing.
Q. Did Grimshaw give you any money?
A. No, sir.

Q. Did Grimshaw give you any money for signing this?
A. No, sir.
Q. Hasn't given you a hundred dollars or something lately?
A. No, sir.
Q. Were you a member of this society?
A. Yes, sir.
Q. Of which branch?
A. Of the women's branch.
Q. What has become of the women's branch?
A. It is there, I suppose.
Q. Do you know any of the members of it?
A. I did know, but they are nearly all dead; of course, I did know them all.
Q. Have you attended any meeting of the society lately?
A. No, sir; we don't have any.
Q. How long since you were there at a meeting?
A. I haven't been at a meeting even when the society was going for at least three or four years or more.
Q. You say the society has pretty nearly died out. Do you know any members who are living?
A. I know some. Sophie Taylor was one, Mary Robinson was one.
Q. Are they members now?
A. No, sir; because the society has broken up.
Q. How about the male members?
A. They are dead.

Mr. DARLINGTON: This examination is objected to as irresponsive to the examination-in-chief.

87 Mr. MACKEY:

Q. What has become of the male members?
A. I don't know. I had no correspondence with the male members of the society.
Q. Were you ever told that the male branch of the Union Beneficial Society were going to sell this property?

Mr. DARLINGTON: Objected to for obvious reasons.

A. Never heard anything about it.
Mr. DARLINGTON: Mrs. Forrest, do you know these two papers that I hand you now? Have you ever seen them before?
A. Yes, sir.
Q. Were they left by your husband?
A. Yes, sir.

Mr. DARLINGTON: I offer them in evidence, unless Mr. Mackey will allow me to put copies in, as she might like to keep them. One is a certificate of her marriage.

(Filed in evidence and marked Exhibit R. F. numbered 1 and 2.)

EXHIBIT R. F. No. 1.

GEORGETOWN, D. C., *April* 18, *A. D.* 1828.

To whom it may concern*ed:* This is to certify that I have joined in marriage Stephney Forrest and Rachel Clark, all being free people and residing on Capitol Hill, in Washington city, D. C.

JOSEPH CARTRIGHT,
Minister of Gospel.

Witness:
JOS. ABRAM.
JAMES MARLOW.

EXHIBIT R. F. No. 2.

CITY OF WASHINGTON, *ss:*

I certify that the bearer hereof, Stephney Forrest, about forty-six years of age, about six feet high, very dark complexion, and by occupation a laborer, hath produced to me satisfactory evidence of the legality of his title to freedom, pursuant to an act of the corporation of the city of Washington entitled "An act to prescribe
88 the terms and conditions upon which free negroes and mulatto-s may reside in the city of Washington, and for other purposes," passed on the fourteenth day of April, in the year eighteen hundred and twenty-one, together with the following list of his family, to wit, a wife named Rebecca, aged forty years of age, and five children: Henry, aged 17 years; Edward, aged 8; Jane, aged six; Martha Ann, aged three years, and George, aged 15 months. They are therefore permitted to reside in the said city of Washington for one year from the date hereof, they complying with the provisions contained in the above-recited act.

In testimony whereof I have hereunto set my hand and caused the seal of the corporation of the said city of Washington to be affixed this first day of September, anno Domini one thousand eight hundred and twenty-one.

[SEAL.] SAM'L N. SMALLWOOD, *Mayor.*

WM. HEWILL, *Register.*

Mr. MACKEY: I object to the competency of the marriage certificate until it is properly proven. I do not object to this other marked R. F. No. 2.

Mr. MACKEY: You say you found this paper (showing witness paper marked R. F. No. 2)?

A. Yes, sir.

Q. Where did you get that paper, Mrs. Forrest?

A. I got it from amongst his papers. I found a good many of his old papers.

Q. How long have you had this?

A. All the time.

Q. What do you mean by "all the time"?

A. Ever since his death. I looked over his papers and found it among them.

Q. When did you find it, twenty years ago?

A. Oh, no; not that long ago.

Q. Did you find it ten years ago?

A. Yes, sir; every bit of it.

Q. Every bit of ten years you have had this paper?

A. Yes, sir.

Q. Think you have had it longer than that?

A. I don't know about that.

89 Q. Where were these papers when you found them?

A. In a trunk that he kept all his particular papers in.

Q. You found it about ten years ago?

A. I don't know particularly. I just found it in looking over his papers.

Q. How do you recognize this as the paper that you found; can you read?

A. No, sir; but I know it by the looks of the paper.

Q. Has any one else had this besides you?

A. No, sir.

Q. Did Mr. Grimshaw ever have that paper?

A. I never gave it to him; never showed it to him. If he got hold of it he might have got it by looking over my papers.

Mr. DARLINGTON:

Q. Did you know your husband's first wife?

A. No, sir.

Q. Do you know how long she had been dead before you married him?

A. Oh, some three or four years. I was not acquainted with the family at that time.

Q. Did your husband have any children at the time you married him?

A. Had three, one fairly grown, and the youngest was about eight years old when I married him.

her
RACHEL x FORREST.
mark.

Subscribed by her mark and sworn to before me this 20th day of November, A. D. 1889.

IRVIN B. LINTON,
Examiner in Chancery.

Adjourned until tomorrow at twelve o'clock with the understanding that the witness Grimshaw will appear for further cross-examination.

THURSDAY, *Nov.* 14, 1889.

Met pursuant to adjournment.

Present: Franklin H. Mackey and H. O. Claughton, Esquires, counsel for complainants, and J. J. Darlington and Wyman L. Cole, Esquires, counsel for defendants.

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Continuation of cross-examination of WILLIAM H. GRIMSHAW.

By Mr. CLAUGHTON:

Q. Do you claim to be a member of this association?
A. No, sir.
Q. Do you claim to know who are the members?
A. I claim to know some of them.
Q. How early did you make their acquaintance; how long ago?
A. A number of years ago.
Q. Be a little more definite than that.
A. Well, probably about fifteen years, or more.

Mr. DARLINGTON: Counsel for the defendants renew objection to this line of examination on the ground that it does not bear upon the sole issue in this cause, which is whether the discontinuance of the use of this ground for a cemetery entitles the heirs of Stephney Forrest to reclaim it.

By Mr. CLAUGHTON:

Q. Now, please give us the names of those that you know are members of this association.
A. Of the Union Beneficial Society—I knew Mr. John F. N. Wilkinson and Mr. Samuel Middleton. I knew them for a number of years and several others that I cannot just recall the names of. I do not know whether they are living or dead.
Q. Those are all whose names you can give?
A. That I can state from memory.
Q. Now, do you know when Mr. Wilkinson became a member?
A. Not exactly the date.
Q. How do you know he is a member at all?
A. I know he is a member by hearing.
Q. From whom?
A. By hearing my grandmother state a good many times, numbers of years ago, that Wilkinson was a member.

91

Q. Who is your grandmother?
A. Rachel Forrest.
Q. Is that all you know about it, what she said?
A. Others, too.
Q. Who are the others?
A. Mr. Thomas Nichols and others.
Q. Who is Mr. Thomas Nichols?
A. Mr. Thomas Nichols is a gentleman living on 4th and B Sts. S. E.
Q. When did you hear Mr. Thomas Nichols say so?
A. Often.

Q. When; as late as one year ago?
A. I don't remember.
Q. As far back, then, as two years ago?
A. I do not remember.
Q. Did you ever hear him say it back further than two years ago?
A. I cannot say now; my memory does not serve me.
Q. Is Thomas Nichols a colored man?
A. Yes, sir.
Q. Do you know when Mr. Middleton became a member?
A. A number of years ago.
Q. Do you know he is a member?
A. Yes, sir.
Q. How do you know?
A. I know Mr. Thomas Nichols named these first.
Q. Is your testimony in regard to what Nichols said as to Wilkinson the same as to Middleton?
A. Yes, sir.
Q. You have never met the members of the society together as an association?
A. No, sir; never at all.
Q. I observe from reading your examination that you declined to answer questions in respect to what disposition you made of the fifteen hundred dollars received from Mr. Clark. Do you still insist upon your objection to answering?
A. No; I don't know that I do.
Q. Well, will you state what you did with it?
A. I received it——

Mr. DARLINGTON: Counsel for the defendants renew objection to this line of examination, and submit to the counsel for the other side that it is a useless waste of time and money making a statements upon matters which can have no possible bearing upon the complainants' cause.

92 The WITNESS (continuing): I received from Mr. Clark three thousand ($3,000) dollars in money and two hundred ($200) dollars in a promissory note from Burgdorf, not from Clark, although Mr. Clark states thirty-two hundred ($3,200) dollars in his statement, which is incorrect; and that note from Burgdorf was turned back to him, never used, and the $3,000 received from Clark was distributed by paying over to the female society about eleven hundred ($1,100) dollars and two hundred and forty ($240) dollars to the Navy Yard Sons of Union, for which I have their acknowledgment; twenty ($20) dollars to Mr. Clark for examining the tax certificates and two hundred ($200) dollars for examining the title, quitclaims, and notary's services. The last fifteen hundred ($1,500) dollars that I received from Mr. Clark, that money was returned to Mr. Clark.

Mr. CLAUGHTON: I only spoke of one $1,500.
The WITNESS: I gave you the whole business.
Mr. CLAUGHTON: I am talking about the $1,500 you kept.

The WITNESS: I am giving you the whole history.

Q. Well, will you please give us the names of the persons to whom you paid this money?

A. At the meeting I think there were some eleven financial members of the Union Female Society, at a meeting called at 1202 B St.

Q. Was it to those eleven that you paid it?

A. The eleven members were there and receipted for the money.

Q. Have you got the receipt?

A. Their receipt is on their deed and was recorded. I know they receipted for it. I don't know how the distribution went.

Q. Did you pay any portion of it to Mrs. Mary Robinson?

A. No, sir; I had nothing to do with that.

Q. Did you pay it to Mrs. Elizabeth Simms?

A. I know nothing about their membership whatever. I had nothing to do with the distribution.

Q. Do you know how much Mrs. Simms got?

A. No, sir.

93 Q. Mary Robinson?

A. I don't know the amount.

Q. Do you remember who the eleven financial members were?

A. I cannot just recall them to mind, but I know that the secretary wrote on the back of the deed the names of the individuals as they received their money. They made their marks before a notary public.

Q. And that is all recorded?

A. I think so.

Q. You were present when that was done?

A. I was in the house.

Q. Were you not in the room?

A. A portion of the time.

Q. Did you not manage it?

A. No, sir.

Q. Who did?

A. Why, the society did, I suppose.

Q. Well, did they absorb the whole $1,500 that you received from Mr. Clark?

A. I don't think they did.

Q. What became of the balance?

A. Well, I have just asserted to you here where the remainder went.

Q. Where did it go?

A. I stated $1,100 went to the society and $240 to the Navy Yard Sons of Union, and $200 for examining the title to Mr. Brooke and other gentlemen and for quitclaims and $20 to Mr. Clark.

Q. That makes up the $1,500?

A. I think so, and more, too.

Q. Did any of the male members of this association get any portion of it?

The WITNESS: Of what association?

Mr. CLAUGHTON: This Union Beneficial Association.

The WITNESS: You are not speaking of the Union Beneficial Association, but of the female association.

Mr. CLAUGHTON: I know.

The WITNESS: Well, when you begin on the north half of that square I am ready to answer your questions.

Q. Did the male members get any portion of this $1,500?

A. No, sir.

Q. You seem to distinguish between a north and a south half?

A. Certainly.

94 Q. What is the distinction?

A. Why, one belonged to the Union Beneficial Society and one belonged to the Female Union Society.

Q. Have you paid Philip Wells any money?

A. I did.

Q. What was that for?

A. Well, I paid Mr. Philip Wells because I found Philip in a position when I was there; he was in a very poor situation, and I knew him—had been knowing him for years—and I paid him $63.

Q. What was that for?

A. As I chose to give it to him.

Q. Mrs. Chew—you gave her some money?

A. I did, sir.

Q. What was that for?

A. I gave Mrs. Chew money for the fact that she told me—in having the title examined I found one James Lodge had been a trustee, and on calling to see her she informed me that she was the surviving heir of James Lodge. I have got her interest. But in straightening up the title for the north half I found that James Lodge was one of the trustees at one time. Then she told me she was the surviving heir of James Lodge, and I paid her $20, I think it was; I think I have her receipt here; she signed a quitclaim for the benefit of the Union Beneficial Society or the Navy Yard Sons of Union in order to perfect the title. After finding that Mrs. Chew had led me astray, and that the real trustee was living and then a minister in the South, I immediately sent for him and brought him to Washington and got the deed from him, signed by himself and the remainders of the members, to correct Mrs. Chew's deed.

Q. Now, these deeds upon their face are to whom?

A. To me.

Q. Not naming any fiduciary capacity?

A. No; they do not.

Q. Now, you state that you were acting in all this as agent for the Union Beneficial Association?

A. Yes, sir.

Q. Who appointed you?

A. The members of the association.

Q. In their individual capacity?

A. Oh, no; I suppose not.

Q. Well, how were you appointed?

A. By their meeting, I suppose.

Q. Were you present at the meeting?

A. No; I was not.

Q. Was your appointment in writing?

95 A. They informed me through the secretary that I was directed to go forward and perfect the title, sell and convey the land according to law.

Q. That doesn't answer my question. Did you have any authority in writing?

A. I might say by the authority of the secretary.

Q. Well, had you any authority in writing?

A. I waive that question just now.

Q. I do not waive the question. You can state whether you will answer it just now?

The WITNESS: I decline to answer it.

Mr. COTTON: The examiner is requested to certify that question up to the court.

Mr. DARLINGTON: Counsel for defendants advise the witness that he is not bound to answer the question if he does not care to, and he suggests that counsel for the complainant need hardly be in doubt in regard to it.

The examination was here suspended in order to permit counsel to present the question for the decision of the court.

Mr. DARLINGTON: The court differing from the defendants' counsel as to the pertinacity of the above question, counsel withdraw their objection.

The question is here repeated, and the witness answers "Yes."

Mr. CLAUGHTON:

Q. Will you produce the writing?

A. I think it is filed among the papers here with my counsel.

(Counsel for the defendants here hands Mr. Claughton a paper.)

Mr. CLAUGHTON:

Q. (Handing the witness the paper.) Is that the authority?

A. Yes, sir.

Mr. CLAUGHTON: Just file it with the examiner.

Filed and marked Exhibit W. H. G. No. 1.

Q. Do you know in whose handwriting that is?

A. The secretary's writing.

96 Q. Who is the secretary?

A. Mr. Wilkinson.

Q. Does he write his signature in the same handwriting?

A. I do not know whether he does or not.

Q. Were you present at the meeting of the members?

A. No, sir.

Q. (Continuing:) When that paper was executed?

A. I was not.

Q. It was only handed to you by the secretary?

A. That is all.

Q. Now, Mr. Grimshaw, I believe that you have testified that you got quitclaim deeds from surviving heirs and from the original trustees and some other parties?

A. Yes, sir.

Q. Did you pay any consideration for them?

A. For what?

Q. For the quitclaim deeds.

A. I guess I did; gave a dollar or so.

Q. Do you know exactly what you did pay?

A. I cannot just exactly, but I think I just paid a nominal sum to acquire a quitclaim from the trustees and others to perfect the title of the Union Society.

Q. That was the only object you had in view?

A. That is all, sir.

Q. Was not the title just as perfect in those trustees as it would be in you by a deed from them?

A. No, sir.

Q. What was the difference?

A. The fact that there was a lot of tax sales on the ground from year to year, dating back as far as 1859; the parties all dead, and the heirs naturally had to be looked after in order to perfect the title.

Q. They could not give you any better title than they had acquired?

A. No, sir; only the title they should find in them.

Q. It was just as good a title when it was transferred to the association as when it was transfered to you?

A. It was not as good when in a hundred as when it was centered in one.

97 Q. You have arranged that in order to get the transfer from them to you?

A. Oh, yes, because I was authorized to do so—to perfect the title for the society.

Q. Well, according to your theory, as I understand it now, you are merely a substituted trustee for those persons who transferred to you?

A. That is all.

Q. But you say you do not remember what sums of money you paid for those quitclaim deeds?

A. I cannot exactly specify.

Q. Did you pay as high as $20?

A. I think I have.

Q. As high as $25?

A. I might have paid $25.

Q. As high as $50?

A. I don't know. Of the north half?

Q. I am talking about the north half exclusively.

A. I do not think I did pay that high.

Q. Now, whatever money you did pay, where did you get it from?

A. Out of my pocket.

Q. It was not the money of the Union Beneficial Society that you were paying?

A. No, sir; my individual money.

Q. Do you know whether Philip Wells could read or write?

A. I do not know whether he could or could not; I have no idea about it at all. I have known him a number of years, but as to his penmanship I do not know.

Mr. DARLINGTON:

Q. You are asked about a payment to Philip Wells of money.

A. Yes, sir.

Q. Did he give you any paper in return for that money?

A. Yes, sir; he secured me.

Q. By what?

A. By a deed.

Q. Is this the deed (handing witness a paper)?

A. Yes, sir; that is the deed.

Mr. CLAUGHTON: Has that deed been recorded?

Mr. DARLINGTON: It has not been, but I will state simply by my own neglect. It has been in my hands a year or more for record and the attention of Mr. Mackey, of counsel for the other
98 side, was called to it. I will have it recorded.

Mr. DARLINGTON:

Q. You have been asked whether this money with which you bought up quitclaims and did other things for the benefit of this company was received from the society. Did you ever receive any money from the society or any of its officers?

A. No, sir; but it was understood that the society would be responsible and refund any money used by me.

Q. My question is whether you ever received a dollar from the society or any representative of it.

A. No, sir.

Q. How much money have you spent for its benefit upon the property?

A. Nearly in the neighborhood of two thousand dollars.

Q. Is that inclusive or exclusive of the money you have already testified about?

A. Outside of that.

Q. What was this two thousand dollars expended for?

A. For removing the dead and purchasing ground for their reburial and for the examination of title, &c.

Q. Have you removed all the bodies from the cemetery?

A. Yes, sir; to the satisfaction of the board of health.

Q. Where have you interred them?

A. In Paine cemetery.

Q. When were these removals made?

A. I think I commenced in March, if I am not mistaken; 1889.

Q Was it prior or subsequent to Mr. Clark's direction to rescind his purchase?

A. After Mr. Clark had taken his proposition back.

Mr. DARLINGTON: Counsel for the defendants state that the deed from Philip Wells to William H. Grimshaw, which has been identified by the witness, bears date the 25th day of August, 1887, was acknowledged before Frank J. White, notary public, on the 8th day of December, 1887, and will file a certified copy of the deed as an exhibit in the cause.

Mr. CLAUGHTON: Counsel for the complainant- object to the introduction of that deed or a certified copy upon two grounds:
99 First, that it bears upon its face evidence of erasures and interlineations, and, secondly, that it is proved by a subscribing witness, and the deed can only be proved by the attesting witness.

The WITNESS: This deed was executed in the presence of Wells' daughter, Rebecca Shorter, and she counted the money right there, and she acknowledged the receipt of the money, and none of them don't deny that fact.

Mr. DARLINGTON: Annexed to the authority from the society to Grimshaw there is a copy of an order of the board of health, which I also offer in evidence.

(Marked "With Exhibit W. H. G. No. 1.")

Mr. DARLINGTON: It is agreed between counsel that it shall be admitted in evidence that bodies removed from this cemetery were removed under the permit of the board of health granted for that purpose.

Mr. DARLINGTON:

Q. I want to ask Mr. Grimshaw another question. How did you receive this authorization from the society to sell that square?

A. Mr. Wilkinson handed it to me, at the Capitol, I think it was.

Q. Handed it to you or sent it to you by mail?

A. Handed it or sent it to me. I think it was at the Capitol.

Mr. CLAUGHTON: I object to the question on the ground that the papers speak for themselves.

(See further cross-examination, page 105.)

JOHN F. N. WILKINSON, a witness of lawful age, being first duly sworn, deposes and says as follows:

Examined by Mr. DARLINGTON:

Q. State your name and residence.

A. My name is John F. N. Wilkinson; residence, No. 901 E street S. W.

Q. What is your occupation?

100 A. Assistant law librarian of the Library of Congress.

Q. Are you a member of the Union Beneficial Society which has been spoken of in this cause?

A. Yes, sir.

Q. When did you become a member of that society?

A. I became a member about January or February, 1868.

Q. How many members were there of the society at that time?
A. About nine.
Q. How many members are living now, so far as you know?
A. Three.
Q. Who are they?
A. Philip Wells, Samuel H. Middleton, and myself.
Q. Did Wells become a member before or after you?
A. Before me.
Q. Did Middleton become a member before or after you?
A. Before.
Q. You were the last member admitted who is now living?
A. Yes, sir.
Q. Were any members admitted after you were admitted?
A. One member.
Q. Who was that?
A. Arthur Chew.
Q. He is not living?
A. He is not living.
Q. Mr. Grimshaw has testified that he was authorized by this beneficial society to effect a sale of so much of this square as it had any interest in. Do you know whether that is true or not—whether he was so authorized?
A. It is a fact, sir.
Q. Were you present at the meeting at which it was done?
A. I was present, and the president and the trustees had a meeting at the house of the president.
Q. Who was the president?
A. Philip Wells.
Q. And at that meeting this authorization was given?
A. We agreed at that meeting to elect Mr. Grimshaw as trustee with power of conveying the square by the title as far as he could.

101 Cross-examination.

By Mr. CLAUGHTON:

Q. Were any minutes kept of that meeting?
A. Yes, sir.
Q. Have you got the book?
A. Yes, sir.
Q. Will you produce it?
A. I have the book here.
Q. Let me see it.

Mr. DARLINGTON: Counsel for the defendant will produce the book with the minutes of that meeting. I presume counsel for the complainant will scarcely ask for other parts of the book.
Mr. CLAUGHTON: I want to examine all the records.
Mr. DARLINGTON: Do you want to investigate the affairs of the entire association?
Mr. CLAUGHTON: I don't want it by scraps.
Mr. DARLINGTON: We will produce it.

. The WITNESS: I will state that the minutes of that special meeting is not recorded in this book, though I can produce a copy of it.

Mr. CLAUGHTON:

Q. Well, produce the copy.

Mr. DARLINGTON: Can you produce the original minutes?

The WITNESS: The original minutes are in that paper just filed (marked Exhibit W. H. G. No. 1).

Mr. DARLINGTON: That is what you refer to as the original?

The WITNESS: That is the result of the consultation and agreement of the president and Mr. Middleton and myself.

Q. The minutes were not written down at the meeting?

A. I have a rough copy.

Mr. CLAUGHTON: That is the original.

Q. Was that paper (Exhibit W. H. G. No. 1) written at the meeting or afterwards?

A. This was written on the night or the afternoon that we met. I noted it in pencil and I went home and wrote it out.

Q. Where is the pencil memorandum?

A. I haven't got that.

Q. Will you produce that?

A. I will if I can.

Mr. DARLINGTON:

Q. If you can, you will do so?

A. Yes, sir.

Mr. CLAUGHTON:

102 Q. I don't care to go on until we determine that fact.

FRIDAY, *November 15th*, 1889.

Met pursuant to adjournment.

Present: Franklin H. Mackey and H. O. Claughton, Esquires, for complainants, and J. J. Darlington and Wyman L. Cole, Esquires, for defendants.

Continuation of cross-examination of JOHN F. N. WILKINSON:

Q. Have you found the pencil memorandum to which you referred yesterday?

A. Yes, sir; I have found the pencil memorandum (handing counsel a paper).

Q. Do you produce that as a pencil memorandum?

A. Yes, sir; that is a pencil memorandum of that consultation.

(Filed in evidence and marked Exhibit J. F. N. W. No. 1.)

Q. Where did you find this, Mr. Wilkinson?

A. I found this among some papers, correspondence that we conducted with the health officer and the commissioners.

Q. Was it folded up when you found it last night or was it straight?

A. It was folded up in this envelope (indicating an envelope in his hand).

Q. It was folded up?

A. Yes, sir; when I found it.

Q. This paper is dated August 30th, 1887. Are you quite sure that the meeting to which you refer was held on that date?

A. Yes, sir.

Q. Is that Philip Wells' signature (showing witness Exhibit W. H. G. No. 1)?

A. I don't know that it is his signature.

Q. Were you not present when that paper was signed?

A. Not by Mr. Wells.

Q. It was not signed by Mr. Wells the same time it was signed by you?

A. No, sir; it was not.

Q. It was signed on the same day it was sent?

A. I don't know, sir.

Q. You don't know whether Wells put his signature to it
103 or when he did it?

A. I can say that by direction of our consultation I was authorized to draw up that paper, and when I drew it up, with the signatures of Mr. Middleton and myself, I then mailed it for the signature of Mr. Wells.

Q. Mailed it to whom?

A. To Mr. Wells, though I would state that I mailed it through Mr. Grimshaw.

Q. What do you mean by "through Mr. Grimshaw"?

A. I addressed a note to Mr. Grimshaw.

Q. Enclosing this paper?

A. To the care of Mr. Grimshaw, "Philip Wells, care of William H. Grimshaw."

Q. I think you say that you never saw the paper until yesterday?

A. Not since I sent it.

Q. This pencil memorandum is all in your handwriting, is it?

A. Yes, sir; that is all in my handwriting.

Q. Now, Mr. Wilkinson, whenever this meeting was held, which these papers indicate was on the 30th day of August, 1887, did you or did you not have information that Mr. Grimshaw had been already acting in obtaining deeds from Philip Wells and other parties for this property?

Mr. DARLINGTON: Objected to because there is no evidence that Mr. Grimshaw had ever obtained a deed from Philip Wells prior to the date of paper and because it is irrelevant.

A. I will say from other parties, but I had no information of his obtaining a deed from Philip Wells, but I had of other parties.

Q. What other parties.

Mr. DARLINGTON: All this is objected to as loading up the record with a lot of statements wholly irrelevant to any issue in this cause.

The WITNESS: The other parties I refer to were some several parties—I cannot just remember now; I could by referring to my notes—who bought this land of ours at different tax sales. McKenney and, I think, Mr. Phillips was another. There was
104 a third party that I can refer to if you will allow me to look at my notes.

Mr. CLAUGHTON: I have no objection. Look at your notes.

The WITNESS: I refer to A. Phillips, A. Bulley, and Mr. McKenney. I have no knowledge of any deed transaction with Philip Wells.

Q. Well, did you have any knowledge that he had been negotiating with Philip Wells for the purchase of his interest in this property?

The WITNESS: That who had any knowledge?

Q. Had you any knowledge at the time this meeting was held that Grimshaw had been negotiating with Philip Wells for the purchase of his interest in this property?

The WITNESS: Before that meeting?

Q. COUNSEL: Yes.

A. I had not before the meeting of August 18th.

Q. Was the meeting which you say gave him authority to act for the association August 18th?

A. Yes, sir; August 18th.

Q. August 30th, it has on its face.

WITNESS: That is the date I addressed that communication to Mr. Grimshaw; the meeting was on August 18th.

Q. Now, by what authority did Mr. Grimshaw make these negotiations and get these deeds of Wells and others?

The WITNESS: What authority?

Q. By what authority did Grimshaw act in getting these deeds from McKenney, Bulley, and others?

A. He acted on his own authority, I suppose.

Mr. CLAUGHTON: On his own authority? Now, Mr. Wilkinson, we will come down right straight to the point. Did you or did you not know before this meeting of which you speak at which this resolution was passed that Mr. Grimshaw had dealings with Mr. Wells as the only surviving member of the association and the sole owner of the property and had negotiated for the purchase from him, and that he had agreed to give him two hundred dollars for his interest, and that when he afterwards found out that you and Middleton were two surviving members of the association that he chided
105 Wells with having attempted to impose upon, and informed him that he could not give him the two hundred dollars; that he had to purchase the interest of the two other persons interested?

Mr. DARLINGTON: Objection renewed.

A. I did not know that.

Q. Do you intend to say that you have not at any time been informed of the fact that prior to this meeting Grimshaw had negoti-

ated for the purchase of this property from Wells as the only person interested in it?

Mr. COLE: Repeat the objection that has been already made to all this class of testimony, and add that the counsel for the defendants advise the witness that it is not a question he is required to answer.

Mr. CLAUGHTON: The examiner is requested to certify the question up.

Mr. CLAUGHTON: I will suspend the examination of Mr. Wilkinson at this point and call Mr. William Grimshaw for recross-examination.

WILLIAM H. GRIMSHAW called for recross-examination.

By Mr. CLAUGHTON:

Q. State, Mr. Grimshaw, whether or not prior to the negotiations on conferences with Middleton and Wilkinson you had not dealt with Philip Wells as the only surviving member of the beneficial association for the purpose of getting a deed from him of the property.

Mr. DARLINGTON: I object.

The WITNESS: I answer no.

Mr. MACKEY:

Q. Will you please to look at this letter and state whether it is your signature or not (handing witness a paper)?

106 Mr. CLAUGHTON:

Q. Is that your signature?

The WITNESS: Wait until I have read the letter.

Mr. CLAUGHTON: The only question is whether that is your signature. The examiner will please note that the witness refuses to answer the question until he has read the letter.

The WITNESS: Yes; I wrote that letter; that is my signature.

Q. You mean to say that when you wrote it you only wrote the signature or the letter?

A. Those are the remarks I made to Mr. Wells.

Q. You wrote this letter?

A. Yes, sir.

Q. When did you find out that the statements which Philip Wells made to you were not true?

A. When I had the title examined.

Q. When was that?

A. Along about, I think—it is about three or four years ago; three years ago now, I guess.

Q. What did the examination of the title discover?

A. It discovered the fact that the ground belonged to the Union Beneficial Society.

Q. Well, didn't you know when you made those negotiations that you were treating with Mr. Wells as the surviving member of the Union Beneficial Society?

A. No, sir; because he told me that the whole title was in him, and that is why I brought forth that letter.

Q. Well, why did he say the whole title was in him?

A. I don't know why.

Q. Did he tell you that he was the only surviving member of the association?

A. No; he represented that the title was in him and he was the only person who had a right to give a deed.

Q. Well, the letter shows that it had been vested in the Union Association.

The WITNESS: I knew that when I had the title examined.

Q. You did not know it when you began to treat with Mr. Wells?

A. No, sir; I took his representations for it.

Q. You didn't know it?

A. No, sir.

Q. Who were the others whom you had to seek that you
107 refer to in this letter?

A. I mean those in whom the title was when examined.

Q. I read from your letter; you say: "On examination of the title I found that you could not give me a title because it was vested in others whom I had to seek." Who are they?

A. I sought for Bulley and the names which have been called by Mr. Wilkinson, and then I sought, I think it was, another person by the name of Smoots. The property had considerable tax-sale certificates that I had to get in.

Q. When did you seek Wilkinson and Middleton?

A. I guess about two and a half or three years ago. We always had a consultation upon the matter before anything was done, as to the north half of that square.

Q. I would be glad if you would be a little more definite, Mr. Grimshaw, than two years or two years and a half.

A. Unless I can refer to my papers, I cannot be any more definite.

Q. How soon after you made these negotiations with Wells was it that you saw Wilkinson and Middleton?

A. I cannot just remember, but I finally concluded them after I had received a communication from Wilkinson and they notifying me of their meeting and action; then I took action as to the north half; I cannot just remember the date.

Q. Did you see Wilkinson and Middleton before you had negotiated for this quitclaim deed from Wells?

A. I think I had.

Q. Did you see them about this property?

The WITNESS: Concerning the property?

COUNSEL: Yes, sir.

A. I disremember now whether I did or did not.

Q. Now, don't you know that you never went to see Middleton and Wilkinson until after you had negotiated with Wells?

A. I answer that I had seen Middleton and Wilkinson often prior to seeing Wells at all.

108 Q. About this property?

A. Yes.

Q. If that was so, why was it that Middleton and Wilkinson had not informed you that Wells hadn't a complete title, so as to prevent you from getting a deed from him?

A. Middleton and Wilkinson always said that the title rested in the Union Beneficial Society, and myself being satisfied, I think, not until, notwithstanding their statements—until I had the title examined by an examiner. I want to make this answer clear. Not being satisfied with the statement until I had procured the title to be properly examined by an examiner.

Q. Do you mean to say that before you negotiated with Philip Wells for his quitclaim deed to this property that you knew that Wilkinson and Middleton were members of this association, and that the property belonged to this association?

A. No; I do not know as I knew positively. I took Wells' representation of the fact, and that was prior to the examination of the title.

Q. But you have just stated that before you made this negotiation with Wells that Wilkinson and Middleton had told you that the property belonged to this association.

A. Exactly so, but I am not supposed to take a man's word as to the property until I examine it myself.

Q. What do you mean by "exactly so"?

A. I mean to concur with your answer.

Q. Now, Mr. Grimshaw, if that was so, that you had seen Wilkinson and Middleton and knew their relations to this society, and that the society owned the property, how do you account for this letter, dated the 10th day of December, 1887, to Wells, in which you charge him with having deceived you at the time that the deed was made, and that you afterwards found out in whom the real title of the property was?

Mr. DARLINGTON: Objected to not only on the ground of irrelevancy, but because the witness has already explained that the persons whose interests are mentioned in that letter were per-
109 sons who had tax deeds against the property.

The WITNESS: I have just answered by saying I found others, and that his representation to me was false as to his entire ownership.

Q. Then you mean to say that what you complain of in this letter was not that the property was in the society, and that there were other members in the society besides himself?

A. I complained of it because he represented to me untruths. I found that the ground did not belong to Philip Wells, as he represented it, but only to him and others whom the title was vested in. That was just the burden of my complaint.

Q. But you have already testified that you knew from Wilkinson and Middleton that fact before you got the deed from Wells.

A. I did not say I knew from Wilkinson that the title rested in the Union Beneficial Society, but I said I heard them say.

Q. You had notice from them that it did?

A. I had no notice.

Q. You had information from them that it did?

A. Yes, sir.

Q. Will you state, when you took this quitclaim deed from Wells, what you understood that you were getting by it.

A. I understood that Mr. Wells offered me any interest he had there. He said he had all the interest, in fact, and he would sell that interest for fifty dollars; and I said, "If the title was in you, sir, I would take the whole expense and give you two hundred dollars if the title rests in you entirely;" and when I found his statement was not true I brought forth my letter.

Q. Now, what did you mean by the "title being in him entirely"?

A. I mean when you buy a piece of property from a man who says he has the whole interest you expect it to be complete.

Q. You had no reference to the title being in him because of his being a member of this association?

A. Yes; because he asserted to me that he, being the president—he was duly authorized by the association to sell and convey.

Q. Then it was an interest derived from his connection with this beneficial association that you were getting?

110 A. I supposed that when a man buys he buys the interest he pays his money for.

Q. My question is that what you purposed to get from Philip Wells was an interest which he held by virtue of his connection with this association.

A. I think so.

Q. Now, what did you do after you discovered that Philip Wells, by virtue of his connection with this association, did not have entire title to the property? What was the next thing you did?

A. I do not remember of doing anything special but going and perfecting the title, anyhow.

Q. How did you perfect the title?

A. I perfected the title by buying up the interests of all parties who had paid taxes in back years, getting their deeds and the deeds from the several trustees or the surviving trustees for the use and benefit of the Union Beneficial Society.

Q. And you did that before you had any authority so to do?

A. No; I did not.

Q. Why, I understood you to have answered that when you got these deeds from McKenney and Bulley you had no others to get.

A. No, sir; I did not assert anything of the kind as to the north half.

The COUNSEL: I am talking about nothing but the north half.

The WITNESS: Yes, you are; your whole argument shows that you went right off on the south half.

The COUNSEL: I am speaking about nothing but what is involved in this suit. I have asked no questions about anything else.

The WITNESS: McKenney's deed has nothing to do with the north half at all.

The COUNSEL: I am talking about the north half, and I am asking nothing outside of it. So McKenney's deed had nothing to do with it?

A. I think not.
Q. And Bulley's?
A. I think not.
Q. And Smoot's?
111 A. I think not; some of them have and some have not; I perfected the title to the entire square.
Q. Well, which of them had something to do with it?
The WITNESS: If you will ask in regard to that north half of the square I will answer that, but when you make no distinction I have to give you the names of all who had an interest in the whole square.
Q. Then, this authority dated the 30th day of August refers to the whole square?
A. No, sir; it refers to the north half of that square.
The COUNSEL: I am talking about the north half of the square, then, only, and all my questions have reference exclusively to the property in litigation in this cause—the north half of this square. Now, I ask you, Mr. Grimshaw, whether or not, previous to this authority dated the 30th day of August, 1887, you had done anything in respect to acquiring the title to the north half of that square.
A. I think not, sir.
Q. All of your negotiations prior to this authority were confined to the south half of the square?
A. Yes, sir.
Q. Now, when you dealt with Philip Wells what property were you getting a quitclaim for?
A. For the north half of that square, if he had an interest.
Q. You were dealing with him in respect to the north half only?
A. Yes, sir.
Q. Now, had you, before you began your negotiations with Wells in respect to the north half, had any conversation with Middleton and Wilkinson in respect to the ownership of this north half?
A. I think I had.
Q. What did they tell you in this conversation about the ownership of this north half?
A. They asserted that the title—they believed that the title belonged to the Union Beneficial Society, although the deed was from Stephney Forrest to the society and was not exactly clear, but the fact of the case was the society furnished the money and the property belonged to the members of the society.

Mr. CLAUGHTON: To all of that answer which is not per-
112 tinent to my question I object.
The WITNESS: You asked me about our conversation.

Q. I understand, then, that the information you derived from Wilkinson and Middleton prior to the negotiations with Wells was to the effect that Wells did not have exclusive title to that property because of his connection with this association.
A. I cannot say whether it was prior or not that I was speaking

to Wells, but I have known Wells for at least twenty-five years. I cannot say. We have often talked over different matters.

Q. I am not talking about information you derived from Wells. My question is in respect to the information you derived from Wilkinson and Middleton *on* previous to your communication with Wells—previous to the quitclaim deed from Wells.

A. I think it was afterwards.

Q. That is, you think now that you had negotiated with Wells before you knew from Middleton and Wilkinson that they were members of the association and that the title was not in Wells?

A. I think so; that is about it.

Q. What effect had this information which you derived from Wilkinson and Middleton, after you got the deed from Wells, upon your actions in respect to Wells' quitclaim to you?

A. It had simply no effect more than the papers secured me if he had any interest in that Union Beneficial Society.

Q. Did you or not by letter or by conversation complain to Wells that you had learned these facts and that he had deceived you?

A. My letter to Wells represents the exact position that I had taken; that he had misrepresented the facts to me as to his entire ownership.

Q. And this letter is the complaint which you made after you found out from Wilkinson and Middleton that they were members of the beneficial association, and that Wells could not give you title by his deed?

A. I think that is about it.

Mr. CLAUGHTON: I offer in evidence the letter referred to
113 in my examination above.

(Filed and marked "Exhibit W. H. G. No. 3.")

EXHIBIT W. H. G. No. 3.

"WASHINGTON, *Dec.* 10, 1887.

SIR: I find that your statement to me as to square 1089 is not true. In the month of July last you sent for me and told me that you was the only one that had the right to sell, and that the title was in you, and that you would sell to me for anything that I felt like giving, and that you made *to* certain charge (I thinking that you understood yourself and the title was with you. I then said to you, If the title is vested in you I will give you $200.00.) In order to stand by the bargain I paid you $63.00 down. You then signed a quitclaim to me as president of a so-called Union Beneficial Society. On examination of the title I found that you could not give me a title because it was vested in others, whom I had to seek and buy from. I called several times at your house and told you that you had lead me to believe that the title was in you and you had received my money and still you cannot give a title, and you had already received more than you oughter have, and — I done right I should not have paid you a cent until the title was examined. I

have nothing more to say. I know that I paid dearly for nothing. I would be glad if there was any way that I might get back my money that I already paid you and others.

Truly, W. H. GRIMSHAW."

By Mr. CLAUGHTON:

Q. Who wrote this quitclaim deed?

A. Oh, I wrote it myself.

Q. All in your handwriting, is it?

114 A. Yes, sir; except as to the acknowledgment.

Q. Will you please look at it and explain that erasure?

A. I blotted considerable there and I erased it all out and wrote all under there; wrote it out clean.

Q. It was only because you blotted it?

A. It was only because I blotted it. The words became blotted and I rubbed them out and rewrote it.

Mr. DARLINGTON:

Q. Were any changes made in that deed after Wells signed and acknowledged it?

A. No, sir.

Q. Whatever interlineations appear there were made before?

A. Yes, sir.

Mr. CLAUGHTON:

Q. When was that deed signed by Wells?

A. I don't remember; I don't know the date exactly now.

Q. Was it signed the day of the date of the deed?

A. It was not signed at all until before the notary public.

Q. Then it was signed in the presence of the notary?

A. Yes, sir.

Q. It was signed at the time of its acknowledgment?

A. Yes, sir.

Q. Mr. Wilkinson has testified, Mr. Grimshaw, that this authority given by the association to you, after having been signed by himself and Middleton, was enclosed and directed to Philip Wells to your care. Did you get it?

A. Yes, sir; I received it.

Q. What did you do with it when you received it?

A. I placed it on file with my papers.

Q. But Philip Wells' name was not on it when you got it from Wilkinson?

A. I don't just remember now. I suppose it was enclosed to Philip Wells and returned to me.

Q. He says it was enclosed to Philip Wells in your care.

A. I don't know just about it as to the date.

Q. Did you know whether Philip Wells signed this paper (showing witness "Exhibit W. H. G. No. 1")?

115 A. I don't know; I think his daughter has been in the habit of writing his name for him sometimes.

Q. Did you ever see the paper last referred to before Wells' signature was on it?

A. I do not know whether I did or did not. I think when the paper came to me my best recollection is that it was signed.

Mr. MACKEY:

Q. When it came to you from whom?

A. I received it by mail.

Q. From whom? From Wilkinson?

A. From Wilkinson or Wells.

Q. I understood you to state yesterday that Wilkinson delivered that paper to you at the Capitol?

A. Wilkinson delivered the paper, but he said it was not just that document; he had put it in the mail.

Q. Do you mean to state that he delivered it to you in person and by mail both?

A. I mean he delivered it to me. I don't know whether it came through the mail or whether Mr. Wilkinson delivered it to me personally. I know the paper emanated from Wilkinson.

Q. When the paper came to you from Wilkinson was it completed?

A. I don't know whether all the names were there or not.

Q. What did you do with it?

A. If Mr. Wells' signature was not there it is very likely that it had been returned to Mr. Wells for his signature and returned to me.

Q. Did you get it by mail?

A. I do not remember, but I showed it to my counsel soon after it was received and placed it on file with my papers.

Q. When did you show it to your counsel?

A. About June, 1888; somewhere along there.

Q. You gave it to Mr. Darlington?

A. Yes, sir; soon after I noticed the suit in the papers brought by the Shorters and others.

Q. How long was that after you received it?

A. Some four or five months, probably.

Q. And you cannot remember whether Wilkinson sent it to you by mail or gave it to you by hand?

A. I don't know exactly now.

116 Q. And you cannot remember whether it came from Wells by mail or by hand?

A. No, sir; I do not just remember as to the paper.

Q. How soon after you sent it to Wells was it before you got it back?

A. I do not know; I cannot state.

Q. Was it a week?

A. It was not but a few days at least.

Q. A few days after you sent it to Wells you got it back?

A. I don't know that I sent it to Wells at all. I am not positive whether I sent it or Mr. Wilkinson sent it.

Q. You had it four or five months and then you gave it to your counsel, Mr. Darlington?

A. I cannot be positive, but soon after that suit was filed by Cummings.

Mr. DARLINGTON:

Q. That was the first suit?

A. Yes, sir; along there.

Mr. CLAUGHTON:

Q. You say after you got your abstract of title you bought up a tax claim from a man named Phillips. What part of the square was that on?

A. The north half, I think.

WM. H. GRIMSHAW.

Subscribed and sworn to before me this 16th day of November, 1889.

IRVIN B. LINTON,
Examiner in Chancery.

Mr. DARLINGTON: I filed the deeds I offered yesterday in evidence, being the deed from Noland to Forrest and the deed from Noland to Wallace, and I also file in evidence certified copies of the deed from Stephney Forrest to David Redden and others and the deed from Wallace to Jones. I also offer in evidence the record in equity cause No. 11734, being the cause of Horace S. Cummings *vs.* Allen C. Clark and others. (Record, p. 220. See Exhibit, p. —.)

(The deeds referred to are filed and marked Exhibits W. H. G. Nos. 4, 5, 6, and 7.)

117 Mr. Darlington, counsel for complainant-, produces a notice that appeared in the Star, which, by consent, is filed as an exhibit and marked Exhibit W. H. G. No. 8.

SAMUEL H. MIDDLETON, a witness of lawful age, being first duly sworn, deposes and says as follows:

Mr. DARLINGTON:

Q. Please state your name, residence, and occupation.

A. My name is Samuel H. Middleton; my residence, No. 350 E street S. W.; my business is I assist in shipping and boxing goods for the various stations of the United States Signal Office, War Department.

Q. Did you know the association know- as the Union Beneficial Society?

A. I do, sir.

Q. Are you a member of it?

A. I am, sir.

Q. When did you become a member of it?

A. In 1867.

Q. Were you present at a meeting of the society held in 1887 relative to the appointment of Mr. Grimshaw as its trustee?

A. To act as trustee; yes, sir.

Q. Where was that meeting held?

A. At Mr. Wells'.

Q. Who was present?

A. Mr. Wilkinson, Mr. Wells, and myself.

Q. What was done at that time?

A. We held a meeting for the purpose of authorizing Mr. Grimshaw to clean up the ground and see what could be done with it, with the dead, etc.

Q. Did you decide to give him that authority?

A. Yes, sir.

Q. Was that done unanimously?

A. Yes, sir. Mr. Wells was present and said he would agree to do whatever was best. He knew Mr. Grimshaw better than I did.

Cross-examination.

By Mr. CLAUGHTON:

Q. Do you know whether or not, when that action that you speak of was taken, whether Mr. Wells was sick in bed?

A. No, sir; sitting at his own front window. It was very warm, too.

118 Q. Did you hold any office in this association?

A. Yes, sir.

Q. What was it?

A. At one time I was elected treasurer; another time I was elected trustee. I was never confirmed by the court as such, but I was elected.

Q. Did you hold any office at the time of this meeting?

A. Yes, sir.

Q. What was it?

A. Both trustee and treasurer. It has never been rescinded, and I hold the office.

Q. When were you elected?

The WITNESS: As what?

Q. As treasurer.

A. You have almost got me now. I didn't keep a run of it; I kept no memorandum of that affair.

Mr. CLAUGHTON: Well, just refer to the book. Can you not tell about how long ago you were elected treasurer?

A. I wouldn't like to say, because that was some time ago. It was before my foster-father died that I was elected.

Q. Did any money ever come into your hands as treasurer?

A. Yes, sir; at one time only.

Q. When was that?

A. That has been a long time ago.

Q. Did you keep any book as treasurer?

A. No, sir.

Q. Never kept any book?
A. Kept no book.

The examination of this witness is suspended to secure the deposition of Frank J. White.

FRANK J. WHITE, a witness of lawful age, being first duly sworn, deposes and says as follows:

By Mr. DARLINGTON:

Q. Your name is Frank J. White?
A. Yes, sir; and I reside in Washington; am attorney and notary public.
Q. Were you a notary on the eighth day of December, 1887?
A. I was.

119 Q. Please look at the paper now shown you, being a deed from Philip Wells, president of the Union Beneficial Society, to William H. Grimshaw, purporting to have been acknowledged before you on the eighth day of December, 1887, and state whether that paper was in fact acknowledged before you.

A. Yes, sir; Mr. Wells acknowledged that to be his act and deed on that date.
Q. By whom was his signature written?
A. I wrote his signature. He made his mark.
Q. Your name also appears as the subscribing witness to his signature. Is that your genuine signature?
A. Yes, sir.

Cross-examination.

Mr. CLAUGHTON:

Q. How came you to write his name?
A. He said he could not write himself.
Q. Now, will you look at the defect in the deed and say what you know about those interlineations?
A. It has been so long ago that I could not say whether they were made at that time or not.
Q. When he was making the mark there, what was the condition of his health and of his hands?
A. He appeared to be as well as old folks generally are—for an old man.

Mr. MACKEY:

Q. Was his hand strong and firm or did it tremble?
A. I cannot say.
Q. Who introduced you to Mr. Wells?
A. Well, now, I don't know whether it was Mr. Grimshaw or not. There was a lady there, and I do not know which introduced me.
Q. Was it at his house?
A. Yes, sir.
Q. And were you taken there by Grimshaw?
A. Yes, sir.

Mr. DARLINGTON: Inasmuch as counsel for complainants express a preference for the original of this paper instead of a certified copy, I here offer to file this as an exhibit as soon as I have it recorded and returned.

(Marked temporarily Exhibit W. H. G. No. 2.)

FRANK J. WHITE,
Per J. B. L.

120 Sworn to before me this 15th day of November, 1889; signed by the examiner for Frank J. White, pursuant to agreement between counsel for both sides.

IRWIN B. LINTON,
Examiner in Chancery.

Continuation of cross-examination of SAMUEL H. MIDDLETON:

(The witness, at the request of counsel for the complainants, examines a book which is handed him, and states:)

A. I was acting as treasurer April 6th, 1869.

Mr. CLAUGHTON:

Q. Did you ever receive any money as treasurer?
A. I did.
Q. When was that?
A. I think some years after that—I think about twelve years ago.
Q. How much was it?
A. Three hundred and some dollars.
Q. Where did you get it from?
A. From the association.
Q. In what shape?
A. In money.

Mr. CLAUGHTON: I guess this is it (reading from the book): "April 6th, 1869, the sum of three hundred and twenty-seven dollars and fifty cents ($327.50) was paid over to S. H. Middleton, the treasurer." Was that it?

A. Yes, sir; I guess that is it.

Q. Mr. CLAUGHTON: We will have to ask the defendants' counsel to file this book in evidence.

Mr. DARLINGTON: We will agree to produce the book at the hearing, but decline to file, as the counsel for the complainant- are not entitled to appropriate the records of this society.

(The book is here marked for identification as Exhibit J. F. N. W. No. 2. Record, p. 182.)

Mr. CLAUGHTON: Mr. Middleton, you just in your own way state the circumstances and the date of Mr. Grimshaw's being connected with this association.

121 Mr. DARLINGTON: Objection to all this kind of testimony is here renewed as having no possible relation to any issue in this cause.

The WITNESS: I don't know that Mr. Grimshaw was ever con-

nected with the association itself, more than he was empowered to act as he did by Mr. Wilkinson and myself.

Q. Well, go on and state the date.

A. The date is according to that paper you have there, where my name appears. You will have to take it off of that. I cannot give it to you.

Q. That is, this paper of the thirtieth of August?

A. According to its date, whatever it is.

Q. Mr. CLAUGHTON: August 30th, 1887 (reading from Exhibit W. H. G. No. 1).

Q. When did you first see Mr. Grimshaw in respect to this business?

A. Well, it was after that paper was written.

Q. You saw Mr. Grimshaw after that?

A. Yes, sir; that was agreed to by Mr. Wilkinson and myself and I put my name to it. That is as much as I can give you of it. It was under that date.

Q. Then you think you had given this authority to Mr. Grimshaw before you had ever seen him?

A. I gave it to Mr. Wilkinson. He met me in relation to it, and I told him to do just as that paper said. I co-operated with him.

Q. Then what you did in the premises was upon information derived from Mr. Wilkinson, and you did what you did through Mr. Wilkinson?

A. No, sir; not exactly through Mr. Wilkinson. Mr. Wilkinson stated these facts to me and wanted my opinion, and I agreed, but not through him. I knew what I was doing, I think.

Q. What I mean is you sent it to Grimshaw through Wilkinson.

A. I did not have any occasion to see him.

Q. What was it that Mr. Wilkinson suggested to be done?

A. He said it was necessary to have a trustee, and that Grimshaw had the other part of the ground, the female portion, on the south side of that same square. I think the square is ten hundred and something, and we claim to own the north half, which an
122 alley divides. We claimed all that, and Mr. Wilkinson said it was necessary since he had got this women's ground or had it in possession and was made trustee, I think, too, and he was cleaning out that ground, and he thought it was all nonsense to leave it there and do nothing with it, as it would be no benefit to us or to anybody else. I told him to see Grimshaw and to see whether we had better clean it up and to see what was best to be done and to have him made a trustee.

Q. Was he ever made a trustee?

A. By our consent he was.

Q. You mean by that he was made an agent for you?

A. By our consent he was made trustee.

Q. By you and Wilkinson?

A. Yes, sir; the first time; then we visited Wells, and he co-operated with us.

Q. Was this done by you as officers or merely as individual members of the association?

A. As owners.

Q. As owners?

Mr. DARLINGTON: Objected to as calling for the opinion of the witness on a question of law.

Mr. CLAUGHTON: Who were the owners?

A. The site belonged to the surviving members.

Q. Who were they?

A. Philip Wells, John F. N. Wilkinson, S. H. Middleton.

Q. Then your negotiations with Mr. Grimshaw were based upon the fact that the property belonged to you and Wilkinson and Wells?

A. On account of our being surviving members.

Q. Belonged to you as surviving members. Now, do you remember when you heard, if you did hear at all, that Wells had made a quitclaim deed to Grimshaw of his one-third in that property?

A. I know nothing at all about that.

Q. You don't know anything about that; don't know when you first heard of it?

A. No; I cannot tell you that, either.

Q. You don't know whether or not when Mr. Wilkinson first spoke to you on the subject he mentioned the fact that Wells had attempted to convey the property to Grimshaw?

123 A. No; the only thing I heard was that he had bought Wells' right to that.

Q. You think you did hear that he had bought Wells' right there?

A. I think I did.

Q. The first information you had in respect to Grimshaw was at the same time you heard he had bought Wells' interest?

(The witness hesitating, the counsel repeats his question.)

Mr. CLAUGHTON: My question is, Mr. Middleton, whether or not at the same time that you were informed of Mr. Wilkinson's desire to have Mr. Grimshaw associated with you, you also heard that Wells had sold his interest.

A. Not at that time.

Q. When did you hear it?

A. Some time after. I heard it in the street from some citizens.

Q. I am speaking about a conversation with Wilkinson.

A. Wilkinson never said anything to me about that.

Q. Who did tell you that?

A. I cannot tell you. I simply heard it on the street.

Q. Nor when you heard it?

A. It was after they asked him to act as trustee. This is the way he became connected with this society. He was cleaning up the other half of the square and it was necessary to have this part, too.

Q. When you heard that he had got possession of the south half

of the square, then it was suggested to you by Mr. Wilkinson that you had better do the same by the north half?

A. Yes, sir; to clean it up and see what was the best to do with it.

Q. Selling it?

A. Yes, sir; everything.

Mr. CLAUGHTON: I think I understand you- testimony, Mr. Middleton; that in all these transactions with Mr. Grimshaw they were done upon the theory, on your part, as the only surviving members of this association, that the property belonged to you individually as such members?

A. I don't know anybody else.

124 Mr. MACKEY:

Q. Did you ever see that paper before today (showing witness Exhibit W. H. G. No. 1)?

A. Oh, yes.

Q. When did you first see it?

A. The first time I saw that—it must have been about the date it was written.

Q. The date it was written?

A. Yes, sir; it was written on August 30th.

Q. Is that your signature to it?

A. Yes, sir.

Q. When did you put that there?

A. When it was brought to me by Mr. Wilkinson.

Q. Was Philip Wells' name on it then?

A. I do not recollect, but I don't think it was.

Q. Well, what did you put your name there for?

A. To co-operate with Mr. Wilkinson and Mr. Wells. Mr. Wells' signature came on there afterward.

Q. You never saw Mr. Wells' signature there until today?

A. Oh, yes; I saw it there before.

Q. You don't know who put it there?

A. No, sir.

Q. Did you write that letter (handing witness a paper)?

A. No, sir; I have written no letters in relation to this transaction at all.

Q. You did not write that letter?

A. No, sir.

Q. Have you got any letters which, for the purpose of comparing handwriting, you will be willing to hand in for the comparison of your writing?

A. I don't know.

Q. Would you mind writing a few words at my dictation?

Mr. DARLINGTON: I object to that.

Mr. MACKEY: I propose to have this witness' handwriting compared with several signatures in this cause.

The WITNESS: I don't object.

Mr. DARLINGTON: I object to it whether the witness does or not.

Mr. MACKEY:

Q. Will you swear you did not write that signature, "Philip Wells"?

A. I could not write it.

125 Q. Will you swear to it?

A. Of course I do.

Q. Do you object to having your handwriting compared with that signature?

A. No, sir.

Mr. DARLINGTON: The letter has not been filed in evidence yet.

Mr. MACKEY: I file it, then, in evidence.

(The letter referred to is here filed and marked Exhibit S. H. M. No. 1.)

Mr. DARLINGTON: Counsel for the defendants waive objection to this remarkable proceeding.

Mr. MACKEY: Before writing his signature I will ask if he has anything in his handwriting here already?

A. No, sir; I have not.

(The witness here proceeds to write his signature and some words at Mr. Mackey's dictation upon a piece of paper, which paper is filed herein and marked Exhibit S. H. M. No. 2.)

Mr. MACKEY:

Q. You haven't any handwriting of your own to compare with it?

A. I haven't here, but I have at home.

Mr. MACKEY: I propose to examine this witness as to his handwriting and to prove, if possible, who wrote the anonymous letter and who forged the signature of Philip Wells.

Mr. DARLINGTON: Counsel for the defendants respectfully suggests to counsel for the complainants that unfounded charges of forgery are scarcely less reprehensible than the crime of forgery itself.

Mr. MACKEY: Where did the witness say he was employed?

Mr. DARLINGTON: The witness Middleton states that at the Signal Office, where he is *he is* employed, Mr. Mackey may find abundant specimens of his handwriting.

Q. Is that your ordinary handwriting, Mr. Middleton, that you wrote for me this morning?

A. No, sir.

Q. It is not?

A. No, sir; I was nervous. Of course, it has some resemblance. But you can get papers that I sign daily at the Signal Office.

Mr. COLE: You did not try to disguise your hand?

126 A. No, sir; I told him I was nervous.

Mr. MACKAY:

Q. How old are you, Mr. Middleton?

A. I was born in 1833, 28th day of April.
Q. I want you to write another sentence.

Mr. DARLINGTON: Objection waived.
(The witness here proceeds to write, at Mr. Mackey's dictation, on Exhibit S. H. M. No. 2 the following sentence: "The old burying ground because he did not pay for it. Philip Wells is not dead.")

Q. Is that the way your signature usually looks?
A. Yes, sir; except the coarseness, the same handwriting.
Q. Cannot you write it smaller that that? Is that the way you usually sign it?
A. Yes, sir. My signature at the Signal Office has not the "H." in it. It is simply "Samuel Middleton."
Q. The same hand that wrote this name, "Samuel H. Middleton," on Exhibit S. H. M. No. 2 wrote the name "Samuel H. Middleton" on Exhibit W. H. G. No 1. Is that so?
A. I beg your pardon, sir. I did not write my name on Exhibit W. H. G. No. 1. I told Mr. Wilkinson to write that when he was up in my room. That is not my handwriting.
Q. Who wrote it?
A. Mr. Wilkinson, in my presence and in my room.
Q. Haven't you testified that you wrote that signature?
A. No, sir; you asked me if that was my signature.
Mr. MACKEY: You said it was your signature.
A. Yes, sir; because I gave him power to write it in my presence.
Q. So you told him to write it?
A. Yes, sir; and it is equal to myself writing it. It was in my presence.

SAMUEL H. MIDDLETON.

Subscribed and sworn to before me this 19th day of November, A. D. 1889.

IRVIN B. LINTON,
Examiner in Chancery.

127 JOHN F. N. WILKINSON recalled.

By Mr. DARLINGTON:

Q. The question addressed by counsel to the preceeding witness, Mr. Middleton, would indicate an effort to prove that at the date of that meeting in August, 1887, Mr. Wells was sick in bed. What light can you throw upon that question?
A. The last time that we called to see Mr. Wells—that was at the meeting in August—Mr. Wells remained in his front room; it was there we consulted and talked over this matter and agreed to that paper. He has been complaining, so far as his general health is concerned, for the last twenty years, first in bed and then out of bed.
Q. Was he lying down or exhibiting any other signs of sickness at that time?
A. No, sir; we found him sitting up.

Q. Dressed?
A. Yes, sir.
Q. Fully dressed?
A. He was fully dressed. My recollection is that I sent him word that we were coming before we came.
Q. That is, the meeting was by appointment?
A. Yes, sir.

By Mr. MACKEY:

Q. Did you write that signature, "Samuel H. Middleton," Exhibit No. 1?
A. Yes, sir.
Q. You did?
A. As I have written all other signatures, by order of the association.
Q. Did you write the name "Philip Wells" there?
A. I did not write that. I stated that I forwarded that paper for Philip Wells' signature.
Q. Can you imitate that signature again, Mr. Wilkinson? Write that name, "Samuel H. Middleton."

(Witness here proceeds to write as directed on a piece of paper filed herein and marked Exhibit J. F. N. W. No. 3.)

Q. That is not in your usual style of handwriting, is it?
A. I can write five hands, if you want to know.
COUNSEL: You can write five hands? Why did you write Samuel H. Middleton's name in a different handwriting from your own?
128 A. I wanted it to compare with his handwriting as near as I could make it, by his authority.
Q. Write now, if you please, the name of Philip Wells.
The WITNESS: In my own way?
Q. As near as you can like "Samuel H. Middleton."
A. I will write it in my own way.
Q. I want you to write it now disguised as you did "Samuel H. Middleton."
Mr. MACKEY (examining paper written upon by witness): You have got it now in your own handwriting?
A. Yes, sir.
Q. Now write it, giving it the character of "Samuel H. Middleton"—the same character of handwriting.
The WITNESS: I would write it this way (again writing upon the paper referred to).
Q. Now write for me, in that same style, "You will be dragged into court and sent to the penitentiary for this burial-ground business."
WITNESS: I will write that in my own way.

Mr. MACKEY:

Q. In the character and style of "Samuel H. Middleton" that you have got down there.

(Witness here proceeds to write the sentence requested upon Exhibit J. F. N. W. No. 3.)

Q. You do not recognize the handwriting of that anonymous letter?

A. I do not know it at all.

Q. And you haven't any idea who wrote that name, "Philip Wells," of the Exhibit W. H. G. No. 1?

A. Not the remotest idea.

Adjourned, subject to notice from counsel.

FRIDAY, *December 27th*, 1889.

Met, pursuant to notice from counsel, at the office of F. H. Mackey, Esquire, at two o'clock p. m.

129 Present: H. O. Claughton, Esquire, and F. H. Mackey, Esquire, counsel for complainants, and J. J. Darlington, Esquire, and Wyman L. Cole, Esquire, counsel for defendants.

Continuation of cross-examination of JOHN F. N. WILKINSON:

By Mr. CLAUGHTON: The examiner will please read the question to which objection was made by counsel for the defendants, but which, upon submission to the court, it was ordered this witness should answer.

The examiner here reads the question referred to, found on page 47 of the testimony, the first question, as follows (reading): "Do you intend to say that you have not at any time been informed of the fact, prior to this meeting, Grimshaw had negotiated for the purchase of this property from Wells as the only person interested in it?"

The WITNESS: I say, sir, I had no information whatever of that fact prior to (hesitating)——

Q. Prior to that meeting I suppose you mean to say?

A. Prior to that meeting.

Q. Had you any conversation with Grimshaw with respect to this property prior to that meeting?

The WITNESS: Which meeting? The meeting at——

Mr. CLAUGHTON:

Q. The meeting at which you authorized him to act.

A. Yes, sir; I had the conversation with Grimshaw.

Q. How long previous to that meeting was it that you had these conversations?

A. Probably about two months before we authorized him to act as trustee.

Q. What was the special matter of the two conversations?

A. In regard to disposing of that property. He informed me that he had been elected as trustee of the woman's half; in fact,

130 that he was a member of that half of the land as representative of his wife's interest, who was a member; that he had a proposition to sell and was authorized to sell that land, and then our

conversation was how we could dispose of our ground in connection with the other.

Q. Where did you have these conversations with Grimshaw?

A. At my house at one time and at the Capitol at another.

Q. Who, if any person, was present at either of these conversations?

A. No one but he and I.

Q. During these conversations or either of them did he speak about Philip Wells' interest in this property?

A. No; he knew perfectly well that Philip Wells was a member of our society; did not call him up in the conversation. Our conversation was as to the disposition of that land the best way we could and of the clearing out of the dead. This was after it had been condemned. Our conversation was how to remove the dead as had been ordered by the board of health.

Q. Did he ever offer to buy from you your interest in that property?

A. No, sir.

Q. Never made you any offer for it?

A. Well, he never made an offer to me, but he made a joint offer.

Q. To whom?

A. That is, in the conversation with me he made a joint offer—that is, he wanted to know if Middleton and I would sell out to him.

Q. Now, in that conversation in which that offer was made did he mention Wells as a party from whom he was to get the title?

A. No; not at that time.

Q. Did he at any time mention Wells?

A. After we had authorized him to act as trustee for us, then he informed us that he had purchased Wells' interest.

Q. You are quite sure that the first information you had from Grimshaw of his negotiations with Wells was after the meeting?

A. I am quite certain of that.

Q. What was your answer to him when the suggestion, or
131 whatever it was, was made in respect to buying from you and Middleton your interests?

A. I told him that we could not give him any definite answer until after we had consulted old man Wells.

Q. Well, did you consult "old man Wells"?

A. We consulted him; went down and had that last meeting. We went down once or twice and he was sick.

Q. Then you mean to say that Grimshaw did not tell you that he had already a deed from "old man Wells"?

A. Well, he did not tell me that he had a deed, but he told me subsequently that he had purchased his interest. I said, "Well, we do not recognize that, and we cannot recognize you as a member of the association. We know nothing about the transaction between you and Wells, and therefore we hold him still as a member of the association."

Q. My question was this, Mr. Wilkinson: Do you mean to say that when he was negotiating with you and Middleton for the pur-

chase of your interests as survivors that he did not say anything at all about a negotiation with Wells?

A. He did not say anything at our first interview.

Q. At what interview did he say anything?

A. After our meeting. When he came to find out that Middleton and I were members then he told us that he had bought Wells' interest out.

Q. Now, was that prior to the meeting or afterward?

A. That was afterward.

Q. Well, will you please explain, if you did not know at the time he called upon you to know whether or not you and Middleton would sell that he had already purchased of Wells, how can you say that you did not recognize the transaction between him and Wells so as to make him a member of the association?

A. Well, that is very easily explained. I have never recognized him yet as a member of the association, Mr. Grimshaw.

Q. Yes; but you say you told him at the time that he suggested or approached you in respect to buying Middleton's and your
132 interests that you did not recognize him as a member of the association, but would have to see the old man?

A. Of course, that was perfectly proper. He not being a member of the association, we could not negotiate with him.

Q. Upon what ground did he claim to be a member of the association so that you could repudiate that claim?

A. I don't know that there was any ground upon which we could repudiate it except that he had bought out Wells' interest.

Q. Mr. Wilkinson, will you state whether or not the conversations which Grimshaw had with you—one at your house and the other at the Capitol—were prior to the meeting of the association which appointed Grimshaw trustee to sell the property?

A. Yes, sir; it was before we empowered him, his conversations with me alone.

Q. The proposition was whether you and Middleton would sell?

A. The conversation was between Grimshaw and I, one at my house and the other at the Capitol.

Q. But he did not offer to buy from you alone?

A. We were talking about the general disposition of the property.

Q. You have referred to two conversations between Grimshaw and yourself, in which you say, in some form or other, he wished to be informed whether or not you and Middleton would sell to him your interest in this property?

Mr. DARLINGTON: I object to that question on the ground that the witness has not connected the two conversations with the proposition to purchase his and Middleton's interests, but, on the contrary, has disconnected them. I mean that he has never stated that the proposition to buy his and Middleton's interests were made at either of the two meetings referred to, but, as I understand, he says it is directly to the contrary.

Mr. CLAUGHTON:

Q. Now, were these conversations before or after the meeting of the association at which he was made trustee to dispose of the property?

A. I have already answered that question, that Mr. Grim-
133 shaw and I had two conversations relative to the disposition of that ground and the removal of the dead. In those two conversations there was no proposition made to buy us out.

Q. Now, was there ever any proposition made by Grimshaw to you to buy the interest of yourself and Middleton?

A. No; only in a general way.

Q. Well, state how.

A. He made a proposition to us to dispose of the entire ground and give us a certain amount of money and relinquish us from all trouble in removing the dead, or any other arrangements that had been made obligatory upon us by order of the board of health.

Q. Have you not stated distinctly that Grimshaw at some time asked you whether or not yours and Middleton's interests in this property could be bought by him?

A. No; he never made any distinct proposition, because we told him we could not act in regard to selling that ground until we had consulted our fellow-member, Mr. Wells.

Q. Now, is it not a little strange that you should state to Mr. Grimshaw that you could not act in selling that property without consulting Mr. Wells unless Mr. Grimshaw had made some proposition to buy?

The WITNESS: Is it not strange?

Mr. CLAUGHTON:

Q. Yes.

A. Of course it might be strange; I would say so.

Q. Then, how do you account for the fact that you, before Grimshaw had made any proposition to buy, told him you could not talk about selling until you had consulted Mr. Wells?

A. I told him the fact because we had to consult Wells and Middleton.

Q. Well, how could you say you could not tell until you had consulted with Wells until somebody had offered to buy?

A. Well, no one had offered to buy. He made a proposition that we should take so much for our interest, in our conversation.

134 Q. When was that?

A. That was made to me and not to Mr. Middleton.

Q. I understand you to say that when he spoke to you he included Middleton's interest as well as yours?

A. I could not undertake to negotiate for Mr. Middleton and Mr. Wells when they were equal with me in the society.

Q. Well, I did not understand you to say that when you first referred to that subject he said anything to you about Wells. You said yours and Middleton's interests.

A. He did not speak of Wells, but I spoke of Wells.

Q. Well, whose interests did he want to buy when he spoke to you?

A. Our interests.

Q. Whose interests?

A. Mr. Middleton's and myself.

Q. He did not at that time say anything about Wells at all?

A. Not at that time, but at a subsequent time—subsequently, when we called his attention after we had ascertained that he had purchased Wells' interest, we told him we could not recognize him.

Q. Whom did you ascertain that from?

A. He told me himself.

Q. After he had been appointed by the association, at a meeting comprised of Wells, Middleton, and Wilkinson, a trustee to sell the property for the association, could either member of the association dispose of his interest in the ground to Mr. Grimshaw?

Mr. DARLINGTON: I object to that question because the counsel has no right to ask the witness a question of law.

A. Of course I could further answer that in the written contract that we gave him, his being our trustee, he was the first to prepare the land for sale, clean out the dead, and everything of that sort, and then when the time came to sell he was to consult us.

Q. Well, was that contract in writing?

A. Well, it was understood.

Q. Is it in writing?

A. If it is not in the paper he has it was an understanding between us.

Q. But my question is, was the contract to which you have
135 just referred in writing?

A. No more than—I cannot just remember whether that part was that he was not to sell until after the land had been cleared of the dead or not, but it was a verbal understanding between us—Mr. Middleton and I.

Q. Was there any contract between you and Middleton and Wells and Grimshaw?

A. Contract for what purpose?

Q. The disposition of this land and what was to be done with the proceeds of it.

A. Only so far as it is in the paper that was executed here.

Q. What paper do you mean?

A. The result of our meeting. That is the only written paper that he has between us.

Q. Mr. Wilkinson, there was an agreement between you and Middleton and Grimshaw, as I understand, as to how he was to act and what he was to do as your trustee and agent, and what was to be done with the proceeds of any sale he should make. Is that so?

A. There is no paper, sir.

Q. Was there an understanding or agreement?

A. We had a verbal agreement as to the sale of the land after it was put in a condition for sale.

Q. And you are quite sure that was not in writing?

A. I don't think that was in writing.

Q. Are you quite sure?

A. It may be in that paper. If it is not in that paper in which he was authorized to act as trustee, then there is no other.

Q. Was there any understanding as to what was to be done with the proceeds of any sale he should make?

A. No, sir; no specific understanding as to that. It was very naturally to be supposed that when the ground was disposed of it would be equally divided.

Q. Between whom?

A. The members.

Q. Who were they?

A. Wells, Middleton, and Wilkinson.

Q. Well, now, he had bought out Wells' share. Who would get Wells' share?

A. Wells would get his share. Wells and he would have
136 to fight out their own battle, so far as Middleton and I were concerned.

Q. Have you ever seen the deed from Wells to Grimshaw?

A. I have never seen it.

Q. (Showing witness Exhibit W. H. G. No. 2.) That is the deed I asked whether you had ssen.

A. I have never seen this deed, sir.

Q. What is the date of it?

A. It is dated the twenty-fi-th day of August, 1887.

Q. Do you know what was the date of your meeting?

A. About August 18th, I guess, sir.

Q. (Handing witness Exhibit W. H. G. No. 1.) What is the date of that paper?

A. It is dated August 30th. That is the date of the information to Mr. Grimshaw, but the date of our meeting was August 18th, as I thought—Thursday, August 18th.

Q. Then it seems, after all, Mr. Wilkinson, that Wells made this deed after your meeting.

A. According to these dates, yes, sir.

Q. It appears, then, that after a meeting of the association, in which Wells, Wilkinson, and Middleton, acting as the association, had authorized Mr. Grimshaw to act as the association's agents, that Wells made a deed of his interest to that agent?

A. Well, I cannot answer that question. I am not a party to the transaction.

Q. I see from the date of these instruments——

WITNESS, interrupting: I am not a party to this transaction.

Q. What was the condition of Mr. Wells' body and mind on those occasions?

A. Well, sometimes, when you would go to see him he would be sick; not bodily sick, but debilitated from old age, and would not talk, and then again you could go to see him and he could talk very clear and very distinct, as he could. He stammers.

Q. Do you mean that his mind at times was lucid and at others not?

A. Whenever we had an interview with him he always talked pretty clear.

Q. You never called upon him when his mind was not clear?

A. We never had an interview with him except when his mind was pretty clear.

137 Q. The only weakness you saw, then, was a physical weakness, not a mental?

A. Yes, sir.

Q. Can he read?

A. No, sir.

Mr. MACKEY:

Q. Mr. Wilkinson, when you wrote this paper, Exhibit J. F. N. W. No. 3, it was written with a sharp-pointed pen and I wanted you to write with a stub pen. Have you any objection to writing the same sentence with a stub pen?

A. Yes, sir; I don't think it is necessary for me to write any more. There is my handwriting.

Q. Do you object to writing this sentence here with a stub pen that you have written with a sharp pen?

A. I have objections, because the phrase, to my mind, is an indecent one and not a proper one to propose to a gentleman to write.

Q. Why did you write it, then?

A. Merely for fun; to show you that I could write. But seriously speaking, now, I don't think it a proper sentence for one gentleman to ask another gentleman to write.

Q. Well, Wilkinson, the complainants claim that you wrote this anonymous letter, and it was evidently written with a stub pen.

The WITNESS: What complainants?

Mr. MACKEY: The complainants in this suit.

The WITNESS: Who?

COUNSEL: Why, the complainants in this suit; all of them claim that you wrote this anonymous letter.

The WITNESS: What one or two or three say that I had written that letter?

COUNSEL: Well, I am not here to be examined. You are to simply answer my question.

The WITNESS: But you say that the "complainants say." I want to know what "complainants say."

COUNSEL: I am not here to answer questions now.

Mr. DARLINGTON: Counsel submits that the witness is not here to answer questions of the character asked.

138 Mr. MACKEY: I stated the reason why we wanted his handwriting.

Mr. DARLINGTON: And I state that I object to carrying this line of examination any further on the most obvious grounds. I consented to it at our last session and then afforded the counsel much

more latitude than I think was proper to do. Mr. Wilkinson is a well-known employee of the Congressional Library, where his handwriting can be seen in abundant quantities if the counsel desires to go into an examination of that sort, and I object to having this record distorted away from the issues in the cause in this way.

Mr. MACKEY: Well, now, I will put my question and give the witness an opportunity to answer or not as he sees fit or feels advised.

Mr. Wilkinson, it is claimed that this anonymous letter, Exhibit S. H. M. No. 1, was written by you. It is evidently written with a stub pen and you have denied that you have written it.

The WITNESS: Yes, sir; emphatically.

Q. One moment, until I have finished my question. For the purpose of establishing or discovering that fact by a comparison of handwriting it would facilitate the investigation to have you write a few of these sentences with a stub pen. Do you object to having that investigation made or to affording any facilities towards this investigation by writing some of these sentences with a stub pen in order that they may be compared?

A. I do not object to afford any facilities for the progress of this suit. I do not write with a stub pen; haven't written with a stub pen, and you have there my handwriting in the agreement that was made with Mr. Grimshaw; I recognize that.

Q. That is not answering my question. I asked you——

The WITNESS (interrupting): Well, in regard to writing sentences from that letter to which you refer, by way of explaining to you as to my handwriting, I object upon the ground that you have in your possession my handwriting.

Mr. MACKEY: But we haven't here your handwriting executed with a stub pen. The anonymous letter was written with a stub
139 pen, and we want your handwriting now written also with a stub pen in order to compare them. Do you object to writing for that purpose any sentences that may be given you from this letter?

The WITNESS: I will be guided by my counsel.

Mr. DARLINGTON: As counsel for Mr. Grimshaw, I object to it because it is introducing into this case questions which have nothing to do with the matter. If Mr. Wilkinson wrote that anonymous letter, if Mr. Wilkinson signed Wells' name to the exhibits here, it has no bearing on Mr. Grimshaw's rights in this cause. Therefore, as representing Grimshaw, I object to his answering the question. I have no relations to Mr. Wilkinson as counsel. Mr. Coles is his counsel.

Mr. COLES: So far as the interests of my clients, Middleton and Wilkinson, are concerned, I would make no objection, but I concur in the propriety of the objections made on behalf of Mr. Grimshaw, and therefore advise the witness that he may decline to make the experiment asked by the counsel with propriety.

Mr. MACKEY: Well, Mr. Wilkinson, your counsel says you may decline with propriety. Do you decline or not?

Mr. COLE: Well, he has said he submits it to counsel, and I advised that he decline.

Mr. MACKEY: Now, you advise that he decline.

Q. Mr. Wilkinson, you are employed in the law library at the Capitol, are you not?

A. Yes, sir.

Q. They use stub pens there, do they not?

A. They may up in the Congressional Library—that is, the miscellaneous department, but they are not used down in the law department.

Q. You mean to say that stub pens are not used in the law library?

A. Not given to us to use.

Q. Are they used?

A. I don't know that they are used at all.

By Mr. DARLINGTON: Mr. Wilkinson, you state that you had two conversations with Grimshaw in regard to this square before the meeting at which he was appointed trustee?

140 A. Yes, sir.

Q. Was anything said at either of those two meetings about the sale of yours and Middleton's interests to Grimshaw?

A. No definite conversation in regard to the sale.

Q. Subsequently, if I understand you, he did make a proposition to pay you and Middleton a certain sum and relieve you of all subsequent responsibility for or in connection with this square?

A. Yes, sir.

Q. Did I understand you to say that you did not agree to do anything about that without the conference with Wells, Middleton, and yourself?

A. Yes, sir; I emphatically told him we could not negotiate to sell, and that was after he was appointed trustee.

Q. Did you, Middleton, and Wells have any other meeting to consider the matter?

A. Never after that meeting when we appointed him trustee.

JNO. F. N. WILKINSON.

Sworn to and subscribed before me this 6th day of February, A. D. 1890.

IRVIN B. LINTON,
Examiner in Chancery.

Mr. DARLINGTON: That closes our case.

141 *Depositions of Complainants in Rebuttal.*

Filed March 24, 1890.

In the Supreme Court of the District of Columbia.

HOPKINS *et al.* vs. GRIMSHAW *et al.* } Equity. No. 11824.

DISTRICT OF COLUMBIA, *County of Washington,* } *ss:*

Be it remembered that at an examination of witnesses begun and held on the 16th day of January, A. D. 1890, and continued from time to time until the 18th day of March, A. D. 1890, when the within depositions were taken, I, Irvin B. Linton, an examiner in chancery, did cause to be personally present in the city of Washington, in said District, the within-named W. H. Stalee, Edwin B. Hay, W. F. MacLennan, John C. McGinn to testify on the part and behalf of the complainants in the above-entitled cause in rebuttal.

And I do hereby certify that in pursuance of agreement between counsel for both sides the annexed depositions were taken down and by me reduced to writing in the presence of and from the statements of the several witnesses at the time and place herein designated and were read over to the witnesses and by them subscribed in my presence, the witnesses having been by me first duly sworn to tell the truth, the whole truth, and nothing but the truth touching the matters at issue in said cause.

I further certify that I am not of counsel for either of the parties to said cause or in any manner interested therein.

IRVIN B. LINTON,
Examiner in Chancery.

Washington, D. C., March 21st, 1890.

142 In the Supreme Court of the District of Columbia.

HOPKINS *et al.* vs. GRIMSHAW *et al.* } No. 11824, Equity Docket.

Depositions on Behalf of the Complainants in Rebuttal.

THURSDAY, *January 16th*, 1890.

Met, pursuant to notice from counsel for the complainants, at the office of F. H. Mackey, Esquire.

Present: F. H. Mackey, Esquire, for complainants, and J. J. Darlington and Wyman L. Cole, Esquires, for defendants.

W. H. STALEE, a witness of lawful age, being first duly sworn, deposes and says as follows:

Examined by Mr. MACKEY:

Q. What is your name and address?
A. W. H. Stalee; residence, 606 A street N. E.
Q. What is your occupation?
A. Photographer.
Q. With whom are you now employed?
A. C. M. Bell.
Q. What is he?
A. A photographer.
Q. Where?
A. No. 701 Fifteenth street.
Q. I hand you two photographs, purporting to be photographs of Exhibits W. H. G. No. 1, W. H. G. No. 2, S. H. M. No. 1, and S. H. M. No. 1 again. Will you tell me what you know about those photographs, whether you took them, and when and where?
A. Made by myself at 701 Fifteenth street in the presence of the examiner here, and they are all fac-similes of writings there photographed by me. I don't remember the date; probably Tuesday or Wednesday last—a week.
Q. Look at that (handing witness Exhibit S. H. M. No. 1). Tell me what you photographed from that?
143 A. I photographed the signature of "Philip Wells" on the third page, fifth line.

(The five photographs here offered in evidence are marked Exhibits W. H. S. No. 1, A. B, C, D, and E respectively.)

Q. And that is a photograph of that word marked on the photograph S. H. M. No. 1, is it not?
A. It is.
Q. Now I will ask you about this photograph. What do you know about that?
A. This is a photograph of the same words, "Philip Wells," in addition to a few other words surroundingit, the first, second, fourth, and fifth lines of S. H. M. No. 1.

(The three photographs here referred to marked W. H. S. No. 2, A, B, and C respectively.)

Q. Are those three exhibits, W. H. S. No. 2, A, B, and C, all taken from the same negative?
A. Exactly from the same.
Q. And how is it with Exhibit W. H. S. No. 1, A, B, C, D, and E?
A. All taken from the same negative.
Q. Now I hand you Exhibit W. H. G. No. 1. Did you photograph anything from that?
A. I photographed this name, "Philip Wells."
Q. And it is upon Exhibit W. H. S. No. 1, A, B, C, D, and E, the first word at the top of the sheet?

A. Yes, sir.

Q. Did you photograph that on the same day that you photographed the others you have spoken of?

A. Yes, sir.

Q. (Showing Exhibit W. H. G. No. 2, a deed.) Did you photograph that?

A. I photographed, "Phillip Wells to William H. Grimshaw." It is on the back of the deed. The photograph is to be found on the Exhibit W. H. S. No. 1, A, B, C, D, and E, the second from the top.

Q. Did you photograph anything else in that deed, Exhibit W. H. G. No. 2?

A. Inside of that same exhibit I photographed "Phillip Wells," two words in third line from the top, of which the third from the top of Exhibit W. H. S. No. 1, A, B, C, D, and E, is a
144 photograph.

Mr. DARLINGTON: Counsel for the defendant Grimshaw, regarding this entire line of examination in respect to handwriting as irrelevant to any issue in this cause and incompetent, declines to enter into any cross-examination in respect to it.

W. H. STALEE.

Sworn to and subscribed before me this thirty-first day of January, A. D. 1890.

IRVIN B. LINTON,
Examiner in Chancery.

EDWIN B. HAY, a witness of lawful age, being first duly sworn, deposes and says as follows:

By Mr. MACKEY:

Q. Please state your name, residence, and profession.

Mr. DARLINGTON: I offer the same objection as to the testimony of the preceeding witness.

A. Edwin B. Hay; 1425 New York avenue; that is my office; attorney-at-law. I have been engaged in the examination of handwriting for nineteen years and have been examined as an expert on the subject in the courts here and elsewhere, and have expressed opinions upon the matter of the comparison of handwritings when the original is given and the doubted handwriting is introduced for the purpose of comparison. I have been accepted in the courts here as what is entitled an expert upon handwriting.

Q. Have you made any examination for the purpose of comparison of handwriting of Exhibits W. H. G. No. 2, W. H. G. No. 1, S. H. M. No. 1, R. F. No. 1, J. F. N. W. No. 2, J. F. N. W. No. 3,
145 W. H. G. No. 3, and Exhibit J. F. N. W. No. 1?

A. Yes, sir; I have examined these papers that are submitted to me and I know them as being the papers shown me heretofore.

Q. What conclusion have you arrived at after making the exami-

nation in respect to the signature "Phillip Wells" on Exhibit W. H. G. No. 1, W. H. G. No. 2—in other words, of all of these exhibits I have mentioned?

A. Well, I have made an examination of these papers and the writings that have been handed to me and in the exhibits mentioned—that is to say, W. H. G. No. 1 and W. H. G. No. 2, both on the inside and outside, it being a deed, and Exhibit S. H. M. No. 1—and, by the comparison of the handwriting upon those papers, those four signatures were written by the same person as a matter of comparison.

Q. In respect of this Exhibit J. F. N. W. No. 2, the book of minutes?

A. I have made an examination of the handwriting also in the book and a comparison with the characteristic parts of the writing in the book with a comparison of the writing upon the deed Exhibit W. H. G. No. 2, and also Exhibit W. H. G. No. 1, upon which the signature "Phillip Wells" appears to have been written by the same person.

Q. Have you made any comparison with S. H. M. No. 1?

A. Yes, sir; and found a comparison of the signatures between the two. The same characteristic handwriting appears in all those writings. The anonymous letter as a matter of real and fictitious writing, and I suppose intended to be anonymous. This Exhibit S. H. M. No. 1 is a specimen of writing of the same character—that is, in its formation, as if written with a stub pen, a back-hand, or straight and small in its character. We have the name of "Samuel H. Middleton" on Exhibit W. H. G. No. 1, and the one who wrote "Samuel H. Middleton" upon the exhibit just named also wrote the writing in this anonymous letter, and in this letter upon page three of it and in the middle part of the letter occurs the name of "Phillip Wells" in the same writing as the "Phillip Wells" in the letter, and also the "Phillip Wells" of Exhibit W. H. G. No. 1.

146 There is no endeavor to depart from it in its form, in its slant, and in its general formation—its general characteristics. There is no difference whatever; the specific characteristics appear in every particular; one is slightly smaller than another, but it is apparent to any one, who is not skilled even, that those two were written by the same person. Now, it is apparent that the same person wrote the "Phillip Wells" in this letter of August 30th, 1887, and the "Phillip Wells" in the body of the anonymous letter. The name "Samuel H. Middleton" upon the other is in the same handwriting as the one in the anonymous letter there. The person who wrote "Samuel H. Middleton" there also wrote "Phillip Wells" to Exhibit W. H. G. No. 1. The same handwriting appears also in the Exhibit W. H. G. No. 2; there is but the difference of slant. One is written back-handed and the other is his usual handwriting; the characteristic is the same in each, and the person who wrote the body of the deed is the one who wrote the endorsement upon the deed of "Phillip Wells to William H. Grimshaw," and the same person wrote the "Phillip Wells" upon Exhibit S. H. M. No. 1 and W. H. G. No. 1. There is no attempt in any of these signatures to

disguise the fact at all. They seem to have been written without any particular intention to copy from any particular writing—that is, it is all the same handwriting; there is no assimilation of other writing in it; those are all the same; whoever wrote one wrote them all.

Q. In regard to this deed, Exhibit W. H. G. No. 2, and this book of minutes, Exhibit J. F. N. W. No. 2, have you made any comparison of handwriting between that contained on the deed and that contained in the book of minutes? And, if so, state what; and if there are any peculiarities or characteristics in the handwriting of the two, state what they are.

A. I have made the comparison of the writing in the other papers with the writing in the book. In the deed some care is taken; at the same time all the characteristics appear there, and, making a comparison with the writing in the book, it is evident that the same hand wrote them both.

147 Q. As a matter of specific words?

A. Upon page seventy-five the words "Union Beneficial Association," which as a name makes a comparison both in their slant and the relative position of the letters and in their formation. There is no attempt to disguise a matter of that kind; in fact there is no disguising in the different writings; there is the spacing, the slant, and the general appearance; the specific characteristics which are very much alike. The party seems to write a variety of ways, but keeps the uniform order and style of writing as in ordinary writing. I find the formation of some letters different, but at the same time there are none made but that we can find a comparison of some letter, and in the joinings too.

Q. In the certificate of marriage, Exhibit R. F. No. 1, have you made a comparison of that?

A. I made a comparison with the other papers, but not sufficient to form any opinion in regard to it. It looks as if it was written with a steel pen and upon a piece of soft paper, I should judge a fly-leaf of a book that had been stained a little from time or dampness, and upon it the ink does not hold as well as upon ordinary writing paper where the sizing has not been disturbed. Moreover, we find shading here where possibly it was not intended, and it would hardly be a fair comparison to make with handwriting on paper of this kind with that upon smooth paper where shades would be made where intended and not possibly occur where not intended, although there are a number of comparisons that will bear comparison with the writing in the book, as in the joining of the D and C, for the District of Columbia, occurring on page 75 of the exhibit and page 74 and page 73 twice, and page 72 twice, page 70 and 71, in fact wherever it occurs there is not a variation in all these pages of this combination which appears here, and that of itself is a matter of suspicion and carries with it some weight in a matter — comparison where we are endeavoring to see if there is a similarity in handwriting.

Q. I will ask you about the word "Stephney Forrest."

148 A. I see in the deed here a very close comparison, which is something very unusual, between Exhibit W. H. G. No. 2, in the seventh line, the "For," which is the first syllable in the word Forrest. While "F" is not exactly similar, except in its crossing, yet the "o" and "r" form such a combination as is unusual to enter into the handwriting of two different people.

Q. In regard to the signature "Joseph Cartright" and the signatures of the two witnesses. What is your opinion in regard to whether they were written by the same person or by different persons?

A. By the same person. All the handwriting is the same in this paper. That, I think, would occur to anybody. There cannot be any possible doubt about it.

Q. That paper, upon its face, purports to have been written April 18th, 1828, sixty-one years ago. From the character of the ink upon the paper, what is your opinion as to whether it was written at the time it purports to have been written?

A. I am merely giving my conjectures as to that, basing it upon nothing, as a matter of certainty. It does not look like a paper written in 1828, but is newer than that.

Q. I will give you a genuine paper dated in 1821. Now, in ancient papers, papers of fifty or sixty years of age, from your experience, what is the character of the writing as to its blackness—that is to say, whether it would appear faded or not?

A. It depends upon whether the paper has been exposed to the weather, whether the air could get to it. There is a difference also between the inks used; one might be a vegatable ink and another an iron ink. However, as a matter of fact, in regard to this certificate of marriage, this would occur to one as being a writing of a recent date, one later than 1828. The paper itself does not show its age; it shows a little effect that might be from dampness or mildew.

Q. Does it look as if it was written with a steel pen?

A. Yes, sir. There is a place that is broken through, and the fine lines indicate such a pen. I doubt whether any other pen could
149 have written such lines. We must take this into consideration also: this is the soft fly-leaf of a book that has never been sized and prepared for ink, and therefore the very fine hair lines, they are hair lines in comparison with the other strokes, would have appeared much smaller in proportion and finer and delicate than they do here, but being written upon this piece of paper it has been allowed to spread a little in all of the lines; but the hair lines that are here indicate that they have been written with a steel pen. I have also examined the Exhibit J. F. N. W. No. 3, which is a piece of paper upon which one line is written and three names, "Philip Wells," "Samuel H. Middleton," and "Philip Wells" again. It looks to me very much as if it is a writing that is an endeavor to depart from what might be the handwriting of an individual; or, in other words, looks as if it was written for a purpose.

Q. In regard to the name "Samuel H. Middleton" and "Philip Wells" occurring there twice. What is your opinion as to their being executed by the person who wrote the deed?

A. I say the one who wrote the "Philip Wells" here wrote the handwriting in the deed here. I notice all through that the word "Phillip" is spelled "Phillip" all the way through.

Q. That is, it is spelled with two "ll"?

A. Yes, sir.

Mr. DARLINGTON: In renewing objection to all the testimony relative to the handwritings I decline to cross-examine this witness upon any of the papers as to which he has testified, and give notice that I shall move to strike out all this testimony as having no relation to any of the issues in the cause.

EDWIN B. HAY.

Sworn to and subscribed before me this thirty-first day of January, A. D. 1890.

IRVIN B. LINTON,
Examiner in Chancery.

150 Adjourned until Wednesday next at two o'clock.

MONDAY, *February 10th*, 1890.

Met, pursuant to notice from counsel for the complainants, at the office of F. H. Mackey, Esquire, the adjournment to Wednesday, February 5th, having been postponed to this date.

Present: F. H. Mackey, Esquire, of counsel for complainants; J. J. Darlington and Wyman L. Cole, Esquires, counsel for defendants.

No witnesses appearing, adjourned subject to notice from counsel for complainants.

WEDNESDAY, *February* 26, 1890.

Met, pursuant to notice from counsel for complainants, at the office of the examiner, 1407 F street, at twelve o'clock m.

Present: F. H. Mackey, Esquire, of counsel for complainants, and Wyman L. Cole, Esquire, of counsel for defendants.

The following depositions were taken by agreement between counsel in the absence of J. J. Darlington, Esq., and subject to his cross-examination if desired:

E. B. HAY, Esquire (recalled).

By Mr. MACKEY:

Q. Before your former testimony in this case, Mr. Hay, had you seen the letter of Mr. Grimshaw, Exhibit W. H. G. No. 3?

A. I had not.

Q. Have you seen it since?

A. Yes, sir.

Q. Have you made any comparison between the handwriting in that letter and the Exhibit W. H. G. No. 1, Exhibit W. H. G. No. 2, the deed, and Exhibit S. H. M. No. 1, the anonymous letter?

Mr. COLE: The defendants here renew the objections which
151 they have heretofore made to this class of testimony, and wish it to be understood that this objection is insisted upon to all of this class without being repeated.

Mr. MACKEY: It is so understood.

The WITNESS: Since my examination on this subject I have had occasion to see the handwriting of one Grimshaw and examined the letter mentioned, the Exhibit W. H. G. No. 3, and have made a comparison between that and the writing which permits me to state that if, as I am informed, this exhibit is in the handwriting of W. H. Grimshaw, then also is the deed, marked Exhibit W. H. G. No. 2, written by W. H. Grimshaw. There is a very strong resemblance between the handwriting of Grimshaw and Wilkinson, close comparison being made between the resolution marked Exhibit W. H. G. No. 1 and the deed; also the handwriting in the book admitted as having been made by Wilkinson. But in making such an examination, and having made the additional and close comparison of the Grimshaw writing, which has been submitted since, why the deed was written by him. Now, by a comparison of this deed, the same comparison follows all the way through with that and the three other exhibits that if Grimshaw wrote the deed, then he wrote the other writings that are in question, the name "Phillip Wells" upon the back of the deed and the Exhibit W. H. G. No. 1, the resolution, and W. H. G. No. 2 and S. H. M. No. 1, which is the anonymous letter, the characteristics in all of those writings bearing a similarity to the W. H. Grimshaw letter. The comparison of the deed with the handwriting of Wilkinson is still very close. There are the similarities existing, as has been already testified to, but there is greater similarity between this letter, which is said to be the original handwriting of Grimshaw, and the deed and all the other writings named in the exhibits. I think, therefore, that Grimshaw is the author of the writings that have been submitted.

Q. About the marriage certificate?

152 A. The same testimony follows with regard to all these writings as above; that includes the marriage certificate, the anonymous letter, and the "Phillip Wells" to the deed and the "Phillip Wells" to Exhibit W. H. G. No. 1, the resolution.

E. B. HAY.

Sworn to before me and subscribed this — day of March, A. D. 1890.

IRVIN B. LINTON,
Examiner in Chancery.

W. F. MACLENNAN, a witness of lawful age, being first duly sworn, deposes and says as follows:

By Mr. MACKEY:

Q. Mr. MacLennan, you will please state your name, residence, and occupation.

A. William F. MacLennan; chief of the division of warrants, Treasury Department; residence, Washington, D. C.

Q. Have you had any experience, Mr. MacLennan, in the comparison of handwriting?

A. Yes, sir; I have had considerable.

Q. Have you ever testified before in these matters?

A. Never testified in court but once, but I have been before committees in Congress.

Q. Does your business as chief of the warrant division require the capacity to compare handwriting?

A. No; I have very often to pass upon that question in the departments; it is not part of my regular duties, however. Frequently such cases are brought up from the Treasurer's office. Whenever any doubt arises in the department as to a signature the question is generally submitted to me by the Treasurer or Secretary.

153 Q. How long have you been in the department?

A. About twenty years.

Q. Have you made the comparison of handwritings a study to any extent?

A. Yes, sir; I have; not so much of late years as in former years. I have, more or less, for fifteen years.

Q. Well, now, you may state whether you have made a comparison of the handwritings of Exhibit W. H. G. No. 3, a letter admitted to have been written by Mr. William H. Grimshaw, and a deed, Exhibit W. H. G. No. 2, which is also admitted to have been written by him, with the signature "Phillip Wells" to Exhibit W. H. G. No. 1 and the handwriting in the anonymous letter, Exhibit S. H. M. No. 1, and the alleged marriage certificate, marked Exhibit R. F. No. 1, and state what conclusion, if any, you have reached in respect of the same.

A. I have made such an examination and have arrived at the conclusion that the man who wrote the letter, Exhibit W. H. G. No. 3, wrote the deed, Exhibit W. H. G. No. 2, and that also the same man signed the name of "Philip Wells" to Exhibit W. H. G. No. 1, the resolution—that is, I mean to say that he could have written it. I could not absolutely state that he did do it, but could have done so, and the anonymous letter, marked Exhibit S. H. M. No. 1. I am not clear about this paper marked Exhibit R. F. No. 1, the marriage certificate, although there are many similarities between the writing in the marriage certificate and the anonymous letter.

Q. Point out some.

A. Well, take the capital letter "F" in Forrest; it is very similar to one on the last page of the anonymous letter, the last line and the second page, one line from the bottom, and in the capital "I" and small "p" in the word "Joseph Cartwright" with the "p" in "Phillip," third line from the bottom of the last page.

Q. How does "p" compare with the "p" in the "Phillip Wells" in the deed?

154 A. It is the same kind of a "p," almost identical. The small "r's" are the same. The double "r's" in "Forrest" in the marriage certificate are the same as the double "r's" in the same word in the anonymous letter wherever it occurs. I observe also that in the word "and" the pen is raised after the "n" in the termination of the letter "n" in the marriage certificate, and that occurs all through the anonymous letter, the same word, without

an exception; possibly there may be one or two exceptions, but I have not discovered any. That is also a strong characteristic in the Grimshaw letter and the deed. I don't think there is anything else that I could say about this certificate.

Q. How about the "M's"?

A. I don't find any "M."

Q. You don't find any "M" in the original letter, but you find them in the anonymous letter, don't you?

A. Yes, sir; the "M's" in the anonymous letter compare, with the exception of one, the "M" in Marlow, one of the witnesses to the certificate.

Mr. MACKEY: That is all, I believe.

Mr. COLE: I will not cross-examine, but will rely upon our objections, and decline to cross-examine.

Mr. MACKEY:

Q. I want to ask one other question of Mr. McLennan. In your opinion as an expert what do you say as to the anonymous letter and the exhibits, the deed, and Exhibits R. F. No. 1 having been written by the same man—the same man who wrote Exhibit W. H. G. No. 3?

A. As I said before, I could not swear absolutely that the same man wrote them, but I am very strongly of the opinion that he did.

Q. You mean by that that not knowing, not having any personal knowledge, you have only to rely upon your opinion in the matter?

A. Yes, sir.

Q. And it is your opinion that the same man wrote the whole of them.

155 A. Yes, sir; the anonymous letter, the Grimshaw letter, and the deed.

Q. Well, I understood you to say a moment ago that you were strongly of the opinion. I will ask you now whether you have any doubt about it?

A. No; I have not. I first stated that I could not say absolutely that the same man wrote it. If you ask my opinion, I am very strongly of the opinion that the same man wrote them. Putting it the other way, it is equivalent to stating that he did absolutely. Now, I am very strongly of the opinion that he did, but that is quite different from the other statement.

Q. Of course you cannot state in any case that unless the man admitted it?

A. No. If I saw him do it, then, of course, I could state absolutely.

W. F. MACLENNAN.

Subscribed and sworn to before me this 20th day of March, 1890.

IRVIN B. LINTON,
Examiner in Chancery.

FRIDAY, *March 2nd*, 1890.

Met pursuant to notice from counsel for complainants.

Present: Franklin H. Mackey, Esquire, for complainants, and Wyman L. Cole, Esquire, for the defendants.

JOHN C. MCGINN, a witness of lawful age, being first duly sworn, deposes and says as follows:

By Mr. MACKEY:

Q. Where do you reside, Mr. McGinn?

A. 225 4½ street.

156 Q. What is your occupation?

A. Chief clerk of the health department; assistant to the health officer.

Q. Of the District of Columbia?

A. Yes, sir.

Q. Are you acquainted with this grave-yard known as "Beckett's burying ground"?

A. Very well, sir.

Q. It is square 1089, the north half of the square, I believe?

A. Yes, sir.

Q. Have you any record in your office showing how many interments were made in the north half of this square for the five years prior to 1883?

A. Yes, sir. The records show that for the five years prior to 1883 there were 1,589 interments.

Mr. COLE: The testimony of the witness as to what the records show objected to.

Mr. MACKEY: What was done in 1883 with respect to prohibiting burials?

A. The health officer recommended to the Commissioners that interments should be discontinued, owing to the overcrowded condition of the grave-yard. That was in the latter part of 1883; it was on November 13th, 1883.

Q. Now, from January, 1883, to November 13th, 1883, how many interments were made?

A. I could not tell you that without consulting the records between those two dates.

Q. What further records have you?

A. After 1883 there were five hundred and sixty (560) interments made.

Q. After January, 1883?

A. After 1883. The records of our office are made according to fiscal year ending on June 30th of each year, and, after the record made in 1883, the total number of interments until interments were discontinued shows five hundred and sixty to have been made.

Q. From when?

A. After the fiscal year ending June 30th, 1883.

Q. Those interments were discontinued on what date?

A. I do not know the exact date on which the order was
157 issued. The letter recommending the discontinuance of burial permits was on November 13th, 1883, but the exact time the order was issued by the Commissioners discontinuing the issue of burial permits I do not know. I can ascertain that if you desire.

Q. Is that a copy of the letter recommending the discontinuance on record in the office of the board of health (showing witness a paper)?

A. Yes, sir; I certified here on the paper that all those papers are copies; the whole of those papers are certified copies of the records of the health department in reference to this matter.

Q. That is your signature?

A. Yes, sir; and it is under the seal of the health department.

Offered in evidence and marked Exhibit J. C. McG. No. 1.

Q. Now, Mr. McGinn, you may state whether you have been at the burying ground while interments were going on or graves being dug for interments and state what you saw done there in respect of the old graves.

A. Well, I have been there on several occasions when graves were being dug. If you want me state a particular instance, I will say that on Nov. 12th, 1883, while in company with the health officers, I saw the remains of one coffin being taken from a grave where another one was to be put down.

Q. Do you mean one body being buried over another?

A. I mean one grave was being dug where one had been previously. They were removing the remains of an old coffin. On occasions afterwards I have seen evidence of two or three coffins being placed one upon another.

Q. And in digging out these graves where there had been a coffin they were throwing the remains of the coffin out on the ground?

A. Yes, sir; to put another in.

Q. What was done with that they took out, thrown on the ground?

A. There was nothing there but the remains of the coffin. I could not say that I remember that there were any bones there.

There were evidences of the ground having been formerly
158 occupied for a grave.

Q. What was the whole condition of the grave-yard at that time in respect of the number of graves in the yard, whether it was completely filled or not?

A. Well, it was just as we stated then; it had been filled over and over again with graves.

Mr. COLE: The testimony of this witness is objected to as irrelevant.

Cross-examination.

By Mr. COLE:

Q. You don't know of your own knowledge whether all of the

human remains interred in this ground have been removed or not, do you?

A. I don't know, of course, that they have been all removed. We suppose that they have been removed. As far as we have any knowledge of it they have been removed.

Q. Yet you have not any knowledge of it, have you?

A. No; I did not superintend the work.

Q. Your duties were solely in the health department, in the office here?

—. No, sir; not simply in the office.

Q. You haven't anything to do with the interments or the removal of remains, have you?

A. No, sir.

Q. Application was made for a permit to remove, but you do not know whether the removals were actually made or not?

A. Well, I would say that I have visited the cemetery during the progress of the removal- and have seen the graves opened and the remains taken out.

Q. Saw some remains removed?

A. Yes, sir; I have seen a great many remains removed.

Q. Can you state how long since any permits were granted for interments in this ground?

A. Not since 1884. I can say that positively (referring to a paper).

159 Redirect examination.

Mr. MACKEY:

Q. He asked you if your business was confined to the office.

A. I stated that it was not.

Q. State what your official duties are in respect of these grave-yards.

A. My business makes me, in addition to the performance of clerical duties, virtually a sanitary superintendent; it takes me with the inspectors on all duties where they are not satisfied with questions, and I go and help them out, so to speak, on all matters relating to sanitary inspection.

Q. You may state whether your visit to this grave-yard was in an official capacity or not.

A. Yes, sir; in an official capacity and in company with the health officer and the inspector.

Mr. COLE: That was in 1883?

A. On November 12th, 1883, I think.

Q. Was that the only time?

A. No. I was there on a number of occasions before that and a good many times after that while they were disinterring these remains.

Mr. MACKEY: Do you remember what the condition of the fences were at that time, in 1883, when you were there, and some time before that?

A. Oh, yes, sir; as stated in our letter, dilapidated and broken

down. Stock was allowed to wander in backwards and forwards in the grave-yard. That was what made us request that they abandon the place as a burial ground. The south half of the square had been abandoned previous to that some time. It was called the Old Ebenezer burying ground. It had been abolished on the recommendation of the old board of health, and, this ground being filled, we requested that the interments there should be discontinued also.

J. C. McGINN.

160 Sworn to before me and subscribed this 21st day of March, A. D. 1890.

IRVIN B. LINTON,
Examiner in Chancery.

Mr. MACKEY: Mr. Darlington was in attendance here before this session began, but was not able to remain, and reserved the right to cross-examine this witness if he should deem it necessary.

TUESDAY, *March* 18, 1890.

The following statement was made by J. J. Darlington, Esquire, counsel for defendant William H. Grimshaw:

Counsel for the defendant Grimshaw having been unable to be present at the examination of the witness John C. McGinn, and pursuant to the right to do so, reserved before said examination, here objects to the entire deposition of said witness—

First, as being incompetent rebuttal, and, secondly, as being irrelevant and immaterial to any issue in this cause; and, relying upon said objections, the counsel for said defendant declines to cross-examine the witness.

161 PLAINTIFFS' EXHIBIT No. 11.

Filed April 5, 1890.

Ex'd and d'l'd to D. Redden 5 June, 1846.

William Noland to Stephney Forrest. } Deed. Rec'd 21st Oct., 1845.

This indenture made the ninth day of August in the year of our Lord one thousand eight hundred and forty-five between William Noland commissioner of public buildings of the one part and Stephney Forrest of the city of Washington of the other part, witnesseth—

That whereas, in virtue of the powers vested in the President of the United States, by the deeds of trust from the original proprietors of the ground on which the city of Washington is located and the trustees on the part of the United States, and the act of Congress entitled "An act making an appropriation for enclosing and improving the public square near the Capitol, and to abolish the office of the commissioners of public buildings and of superintendent, and for the appointment of one commissioner of public

buildings, the commissioner of public buildings is authorized and required to sell the lots belonging to the United States in the city of Washington," at such time or times, in such manner, and on such terms and conditions as the President of the United States for the time being shall direct.

Now this indenture witnesseth, that the said William Noland commissioner of public buildings aforesaid for and in consideration of the sum of one hundred and twenty-nine dollars ninety-three and half cents to him in hand paid by the said Stephney Forrest at or before the sealing and delivery hereof (the receipt whereof is hereby acknowledged) hath bargained and sold and by these presents doth bargain and sell unto the said Stephney Forrest
162 his heirs and assigns the lots designated as lots No. 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, in square No. one thousand and eighty-nine (1089) in the plan of the city of Washington, subject however to the terms and conditions declared by the President of the United States for regulating the materials and manner of the buildings and improvements on the lots in the said city of Washington. To have and to hold the said lots with their privileges and appurtenances to him the said Stephney Forrest his heirs and assigns forever. And I, the said William Noland, in my capacity of commissioner of public buildings aforesaid, do covenant with the said Stephney Forrest, his heirs and assigns, that I am duly and legally authorized to sell the said lots and that I have in all things in regard to said sale, observed the rules and requisitions of law.

In testimony whereof I have hereunto set my hand and seal the day and year first above written.

WM. NOLAND, [SEAL.]
Commissioner of Public Buildings.

163 PLAINTIFFS' EXHIBIT No. 9.

Filed April 5, 1890.

Deed. Received 21st Octo., 1845.

Stephney Forrest to David Redden and other-, Trustees. } W. B. 121, folio 251.

This indenture made in the year of our Lord one thousand eight hundred and forty-five between Stephney Forrest of the city of Washington and District of Columbia of the one part and David Redden, Daniel Simms, and William Barton trustees for the Union Beneficial Society of Washington City of the other part. Witnesseth: That the said Stephney Forrest for and in consideration of the sum of one hundred and twenty-nine dollars and ninety-three cents current money of the United States to him in hand paid, at or before the sealing and delivery of these presents by the said David Redden, Daniel Simms and William Barton, trustees as aforesaid the receipt of which is hereby acknowledged, hath granted, bargained and sold, enfeoffed, conveyed, released and confirmed, and

by these presents doth give, grant, bargain and sell, enfeoff, convey, release, and confirm unto the said David Redden, Daniel Simms and William Barton trustees as aforesaid and their successors in office forever all of lots designated as lots numbered nine, ten, eleven, twelve, thirteen, fourteen, fifteen, sixteen, seventeen, eighteen, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 in square numbered one thousand and eighty-nine (1089) in the plan of the city of Washington together with the buildings, improvements, rights privileges, appurtenances and other hereditaments to the same belonging or in any manner ap-ertaining: and the remainders, reversions, rents, issues and profits thereof and the rights title and interest and estate of him the said Stephney Forrest in and to the same. To have and
164 to hold the said lots of ground and premises with the appurtenances unto the said David Redden, Daniel Simms and William Barton and their successors in office forever for the sole use and benefit of the Union Beneficial Society of the city of Washington as aforesaid for a burial ground and for no other purpose whatever and the said Stephney Forrest for himself his heirs executors and administrators, by these presents, covenants, promises and agrees to and with the said David Redden, Daniel Simms and William Barton trustees and the successors in office in manner following to wit: That the said Stephney Forrest and his heirs shall and will at all times warrant and defend the said lots of ground and premises with the appurtenances hereby bargained and sold unto them the said trustees and their successors in office from and against him, the said Stephney Forrest his heirs and assigns, and all persons claiming or who may claim, by, under or through him, them or any of them and further, that he the said Stephney Forrest and his heirs, shall and will at any and all times hereafter at the request and cost of said trustees make and execute any and every other deed of assurance in law, for the more sure and effectual conveyance of all said lots of ground and premises with the appurtenances to the said trustees or their successors in office or their counsel learned in the law may or shall devise, advise, or require.

In testimony, thereof the said Stephney Forrest hath hereunto set his hand and affixed his seal the day and year first hereinbefore written.

STEPHNEY his x mark. FORREST. [SEAL.]

Signed, sealed, and delivered in the presence of—
JAMES MARSHALL
JAMES CRANDALL.

DISTRICT OF COLUMBIA, *Washington County,* } *To wit:*

Be it remembered that on this twenty-fifth day of September, in the year one thousand eight hundred and forty-five, before the
165 undersigned, two justices of the peace in and for the county aforesaid, personally appeared Stephney Forrest, party grantor

within named, who acknowledged the within and foregoing instrument of writing to be his act and deed and the lots of ground and premises, with appurtenances, therein mentioned to be the right and estate of the therein-named grantees and their successors in office forever for a burial ground and no other purpose; and now at the same time personally appears Rachel Forrest, wife of the said Stephney Forrest, who also makes her acknowledgment of the same, and, she being by us privately examined apart from and out of the presence and hearing of her husband whether she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill-usage by her husband or fear of his displeasure, she acknowledges and declares that she doth make her acknowledgment of the same willingly and freely and without being induced thereto by fear or threats of or ill-usage by her husband or fear of his displeasure.

Taken before me and certified by—

JAMES MARSHALL, *J. P.* [SEAL.]
JAMES CRANDELL, *J. P.* [SEAL.]

166 *Deed.*

Wm. Noland to Israel Wallace. } Rec'd 6th October, 1845.

Paid.

Ex'd and del. to grantee 6th April, 1846.

This indenture, made the ninth day of August in the year of our Lord one thousand eight hundred and forty-five between William Noland commissioner of public buildings, of the one part, and Israel Wallace of the city of Washington of the other part, witnesseth, that whereas in virtue of the powers vested in the President of the United States, by the deeds of trust from the original proprietors of the ground on which the city of Washington is located, and the trustees on the part of the United States, and the act of Congress entitled "An act making an appropriation for enclosing and improving the public square near the Capitol, and to abolish the office of the commissioners of public buildings and of superintendents and for the appointment of one commissioner of public buildings is authorized and required to sell the lots belonging to the United States, in the city of Washington," at such time or times, in such manner, and on such terms and conditions, as the President of the United States for the time being shall direct:

Now, this indenture witnesseth, that the said William Noland commissioner of public buildings aforesaid, for and in consideration of the sum of one hundred and twenty-nine dollars, ninety-one and half cents to him in hand paid by the said Israel Wallace at or before the sealing and delivery hereof the receipt whereof is hereby acknowledged, hath bargained and sold, and by these presents doth bargain and sell, unto the said Israel Wallace his heirs and assigns the lots designated as lots No. 1, 2, 3, 4, 5, 6, 7, 8, 19, 20, in square No. one thousand and eighty-nine (1089) in the plan of the city of

Washington, subject however, to the terms and conditions
167 declared by the President of the United States for regulating the materials and manner of the buildings and improvements on the lots in the said city of Washington: to have and to hold the said lots with their privileges and appurtenances, to him the said Israel Wallace his heirs and assigns forever, and I, the said William Noland in my capacity of commissioner of public buildings aforesaid, do covenant with the said Israel Wallace his heirs and assigns, that I am duly and legally authorized to sell the said lots and that I have, in all things in regard to said sale, observed the rules and requisitions of law.

In testimony whereof, I have hereunto set my hand and seal the day and year first above written.

WM. NOLAND, [SEAL.]
Commissioner of Public Buildings.

168 *Deed.*

Isaac Wallace and wife
to
Noah Jones and others. } Rec'd 6th October, 1845.

Paid.

Ex'd and del. to grantor 6th April, 1846.

This indenture made this sixth day of October in the year of our Lord eighteen hundred and forty-five, between Isaac Wallace and Elizabeth Wallace his wife, of the city of Washington, and District of Columbia of the first part, and Noah Jones, Charles Thomas and William Brown of the same place. Trustees hereinafter named of the second part. Witnesseth that the said parties of the first part for and in consideration of the sum of one hundred dollars to them in hand paid by the said parties of the second part at and before the sealing and delivery hereof. The receipt of which they do hereby acknowledge, have granted, bargained and sold, aliened, enfeoffed, assigned, transferred, set over and conveyed, and by these presents do grant, bargain, and sell, alien, enfeoff, assign, transfer, set over and convey unto the said parties of the second part and the survivors and survivor of them, their and his heirs and assigns, (trustees hereinafter mentioned for the uses and purposes hereinafter set forth) all those lots, pieces or parcels of ground in the said city and known and distinguished in the plat and marked and laid down on the ground plan thereof as lots numbered one (1), two (2), three (3), four (4), five (5), six (6), seven (7), eight (8), nineteen (19) and twenty (20), in square one thousand and eighty-nine, together with all and singular the rights, privileges, hereditaments, appurtenances to each and every of the said lots, pieces or parcels of ground, belonging or in anywise appertaining. To have and to hold the said pieces or parcels of ground and each and every of them with their and every of their appurtenances and all the premises aforesaid, unto the use of the said parties of the
169 second part, and the survivors and survivor of them, and their and his heirs and assigns forever upon the trusts never-

theless hereinafter mentioned, and for no other purpose that is to say, in trust to make, lay off and inclose the said pieces or parcels of ground as a grave-yard or burial ground to be called the Union burial ground of the Colored Female Union Society of the City of Washington, and upon the further trust at all times forever hereafter or so long as the said Colored Female Union Society shall be in existence, that is, so long as there shall be according to the articles of agreement of said society, its by-laws or regulations as the same may be from time to time made a sufficient number of persons regularly constituted members thereof to keep such society alive or in existence, to suffer and permit each and every member thereof who may die during such membership to have a grave or burial site free of charge or expense. And upon the further trust and confidence to sell and dispose of ground or burial sites not to exceed the number of six graves or sites to any person in said grave-yard or burial ground, to such persons or person and for such considerations as they the said parties of the second part and the survivors or survivor of them, their and his heirs and assigns, may from time to time deem proper and that they the said parties of the second part, and the survivors and survivor of them, their and his heirs and assigns, shall account for and pay over by regular quarterly accounts and payments on the first day of January, the first day of April, the first day of July and the first day of October, in each and every year, to the treasurer or treasurers of the said Colored Female Union Society, for the time being, all and every such sum or sums of money as may from time to time and at all times hereafter be realized or arise from the sale of graves or burial sites as aforesaid. And in the further trust and confidence to suffer and permit the said Colored Female Union Society or a majority of the legally constituted members thereof at such periods from time to time and at all times forever hereafter as the said society or a majority of the legally constituted members thereof shall see fit to select, nominate or appoint such other person or persons as they may deem proper in the place or stead of the said
170 parties of the second part, and the survivors and survivor of them, their and his heirs and assigns, as trustees to be invested with all the power herein granted to the said parties of the second part and the survivors and survivor of them, their and his heirs and assigns, provided always, that all and every such person or persons so selected, nominated or appointed trustees under these presents shall be at least twenty-one years of age, and every such selection nomination or appointment be entered upon the minutes and attested by the president and secretary for the time being of said society, and upon every such selection, nomination or appointment the said parties of the second part and the survivors and survivor of them their and his heirs and assigns shall convey the said pieces or parcels of ground and premises with their and every of their appurtenances, to such person or persons as may from to time and at all times forever hereafter be selected, nominated or appointed as aforesaid upon the like trusts and for the like uses and purposes as are herein declared of, and concerning the said pieces

or parcels of ground so that from time to time and at all times forever hereafter so often as the said society, or a majority of the legally constituted members thereof, shall deem proper new trustees may be selected, nominated or appointed. And upon the further trusts and confidence to grant, bargain, and sell and convey all and every of the said pieces or parcels of ground with their and every of their appurtenances and all the premises aforesaid for such consideration or considerations, and to, for and upon such uses, and trusts as the said Colored Female Union Society or a majority of the regularly constituted and actual members thereof for the time being by a resolution of said Colored Female Union Society, or a majority of such members entered upon the minutes and attested by the president and secretary thereof for the time being, may direct. And the said parties for themselves, and heirs,—hereby covenant to and with the said parties of the second part and the survivors and survivor of them, their, and his heirs and assigns, that they, the said parties of the first part and their heirs shall and will at any and at
171 all times hereafter at the request and cost of the said parties of the second part and the survivors and survivor of them, their, and his heirs and assigns, make execute acknowledge and deliver any and every such other and further deeds and assurances in the law for the further and more perfect assuring and conveying all and every of the said pieces or parcels of ground with their and every of their appurtenances, and all the premises aforesaid unto and to the use of the said parties of the second part and the survivors and survivor of them, their and his heirs and assigns, upon the trusts and for the purposes hereinbefore set forth, that they, or he, his or their counsel learned in the law may devise advise or require.

In testimony whereof, the said parties of the first part have hereunto, respectively, set their hands, and affixed their seals the day and year first hereinbefore mentioned.

his
ISAAC x WALLACE. [SEAL.]
mark.
E. WALLACE. [SEAL.]

Signed, sealed, and delivered in the presence of—

J. W. BECK.
E. W. SMALLWOOD.

DISTRICT OF COLUMBIA, } *sct:*
Washington County, }

We, Joseph W. Beck and —— ——, justices of the peace in and for the county aforesaid, in the District of Columbia, do hereby certify that Isaac Wallace, a party to a certain deed bearing date the 6th day of October, in the year 1845, and hereunto annexed, personally appeared before us, in our county aforesaid, the said Isaac Wallace being personally well known to us to be the person who executed the said deed, and acknowledged the same to be his act and

deed; and we do further certify that Elizabeth Wallace, the wife of the said Isaac Wallace, party to said deed bearing date the sixth day of October, in the year 1845, and hereunto annexed, personally appeared before us, in our county aforesaid, the said Eliza-
172 beth Wallace being personally well known to us as the person who executed the said deed, and, being by us examined privily and apart from her husband and having the said deed fully explained to her, she, the said Elizabeth Wallace, acknowledged the same to be her act and deed and declared that she had willingly signed, sealed, and delivered the same, and that she wished not to retract it.

Given under our hands and seals this sixth day of October, 1845.

J. W. BECK, *J. P.* [SEAL.]
E. W. SMALLWOOD, *J. P.* [SEAL.]

173 W. H. G. No. 2.

Liber 1437, folio 322.

Filed May 10, 1892. J. R. Young, clerk.

Phillip Wells to Wm. H. Grimshaw. } Recorded Nov. 15, 1889, 1.26 p. m. Quitclaim.

Know all men by these presents, that I Phillip Wells president of the Union Beneficial Society being duly authorized with full power to sell and convey all the interest of the first parties, and all my interest I have this day for and in consideration of the sum of sixty-three dollars, in lawful money of the United States to me in hand paid by W. H. Grimshaw, of the same city, the receipt whereof is hereby acknowledged, have bargained sold, and quitclaimed and by these presents do bargain sell and quitclaim unto the said W. H. Grimshaw and to his heirs and assigns forever, all my interest and each of our right, title, interest estate, claim and demand, both at law and in equity, and as well in possession as in expe*n*tancy, of, in and to all that certain piece of land situate in square (1089) in Washington city bord-ing on the line of C St. between 16 and 17 streets S. E. being lots (9), (10), (11), (12), (13), (14), (15), (16), (17) and (18), with all and singular the hereditaments, and appurtenances thereunto belonging I, my heirs and assigns, shall and will warrant and forever defend by these presents.

In witness whereof, I have hereunto set my hand and seal this 25 day of August A. D. 1887.

his
PHILLIP x WELLS. [SEAL.]
mark.

Witness:
FRANK J. WHITE.

DISTRICT OF COLUMBIA, *ss:*

I, Frank J. White, a notary public in and for the District of Columbia aforesaid, do hereby certify that Phillip Wells, party to a certain deed bearing date on the twenty-fifth day of August, A. D. 1887, and hereunto annexed, personally appeared before me, in District aforesaid, the said Phillip Wells being personally well known to me to be the person who executed the said deed, and ac-
174 knowledged the same to be his act and deed.

Given under my hand and notarial seal this 8th day of December, A. D. 1887.

[NOTARIAL SEAL.] FRANK J. WHITE,
Notary Public.

Endorsed.

Fee, $1.00.

This is to certify that the within is a true and verified copy of an instrument as recorded in Liber No. 1437, fol. 322 *et seq.*, one of the land records of the District of Columbia.

Washington, D. C., May 9, 1892.

[SEAL.] GEO. F. SCHAYER,
Dep. Recorder.

175 *Deed.*

This indenture, made this 27th day of March in the year of our Lord one thousand eight hundred and eighty-nine by and between Stephney Forrest (unmarried) of New Bedford, State of Massachusetts, one of the heirs-at-law of Stephney Forrest deceased, of the first part and Horace S. Cummings, of Exeter, New Hampshire, party of the second part;

Witnesseth, that the said party of the first part, for and in consideration of the sum of one dollar, in lawful money of the United States, to him in hand paid by the said party of the second part, at and before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, aliened, enfeoffed, released and conveyed, and does by these presents, grant, bargain, sell, alien, enfeoff, release, and convey unto the said party of the second part his heirs and assigns forever, the following-described real estate, situate in the city of Washington, District of Columbia, and known as original lots nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), and eighteen (18), of square one thousand and eighty-nine;

Together with all the improvements, ways, easements, rights, privileges, and appurtenances to the same belonging, or in anywise appertaining, and all the estate, right, title, interest and claim, either at law or in equity, or otherwise however, of the said party of the first part, of, in, to, or out of the said pieces or parcels of ground and premises.

To have and to hold the said pieces or parcels of ground and premises and appurtenances, unto, and to the use of the said party of the second part, his heirs and assigns.

In and upon the trusts nevertheless, hereinafter mentioned and declared, that is to say, in trust to sell and convey the same
176 to such person or persons, in fee-simple or otherwise, and upon such terms and conditions as Franklin H. Mackey, of the District of Columbia, shall in writing direct, and the proceeds of said sale to distribute according to the terms of a paper of even date herewith and signed in duplicate by the party of the first part, one copy of which is in the hands of the said Cummings and the other in the hands of the said Mackey; and the purchaser or purchasers of said property shall not be required to see to the application of the purchase-money.

In testimony whereof the said party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

his
STEPHNEY x FORREST. [SEAL.]
mark.

Signed, sealed, and delivered in the presence of—
FRANCIS B. GREENE.

COUNTY OF BRISTOL, } ss:
State of Massachusetts, }

I, Francis B. Greene, a notary public in and for the county and State aforesaid, do hereby certify that Stephney Forrest, party to a certain deed bearing date on the 27th day of March, A. D. 1889, and hereunto annexed, personally appeared before me, in the county aforesaid, the said Stephney Forrest being personally well known to me to be the person who executed the said deed; and acknowledged the same to be his act and deed.

Given under my hand and seal this twenty-seventh day of March, A. D. 1889.

[SEAL.] FRANCIS B. GREENE,
Notary Public.

177 STATE OF MASSACHUSETTS, } ss:
County of Bristol, }

I, Thomas J. Cobb, clerk of the third district court of Bristol, in and for said county (said court being a court of record), do hereby certify that Francis B. Greene, of New Bedford, in said county, whose name is subscribed to the certificate of proof or acknowledgment of the annexed instrument and thereon written, was at the time of taking such proof or acknowledgment a notary public of the State of Massachusetts in and for the said county of Bristol, dwelling in said county, commissioned and sworn and duly authorized to take the same; and, further, that I am well acquainted with the handwriting of such notary public and verily believe that the signature to the said certificate is genuine, and that said instrument is executed and acknowledged according to the laws of the State of Massachusetts.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this twenty-seventh day of March, 1889.

[SEAL.] THOS. J. COBB, *Clerk.*

Endorsed: Received for record Oct. 11, 1889, at 12.03 p. m. Recorded in Liber No. 1429, folio 114 *et seq.*, one of the land records of the District of Columbia. Examined by Jas. M. Trotter, recorder. Office of recorder of deeds, District of Columbia.

178 EXHIBIT J. C. McG. No. 1.

HEALTH DEPARTMENT,
DISTRICT OF COLUMBIA, *Sep.* 24, 1889.

Extracts from the Minutes of the Late Board of Health of the District of Columbia, June 2d, 1874.

"Dr. Verdi, from the sanitary committee, submitted a report recommending that Ebenezer cemetery, Washington, D. C., be declared a nuisance injurious to health, and that the further interment of the dead therein be prohibited.

"Report was accepted and the recommendations adopted."

Copy.

Nov. 13, 1883.

To the Commissioners of the District of Columbia.

GENTLEMEN: The square of ground numbered 1089 and situated between 16th and 17th and C and D streets S. E., in this city (see plat herewith), has been used for a number of years as a burying ground by a certain class of colored persons. It has been the opinion of this department for some time that the sanitary welfare of the community would soon demand a discontinuance of the interment of human remains at this point, and I think that time has arrived. By reference to the plat it will be seen that the space for interments is limited, and when it is known that within the past five years there have been 1,589 bodies buried in the north half of the square some idea of how the earth is packed with remains may be obtained.

I am informed that many interments have been made one upon another, and, upon personal inspection made yesterday, I saw the portions of one coffin being thrown up from a grave just preparing for another.

179 I have decided that it is best to discontinue the issue of permits for interments in these grounds, which are known as the "Union Beneficial" or Becket's grounds, and would ask the approval of the Commissioners to such action.

Very respectfully,

(Signed) SMITH TOWNSHEND, M. D.,
Health Officer.

Nov. 12, '83. 7299. Wilkinson, J. F. N., and Middleton, S. H.

Brief.

Nov. 12, '83.

Notifying health officer of the election of William Beckett as superintendent Union Beneficial Association burial grounds. Action filed.

Sept. 1, '87. 13201. Grimshaw, W. H., trustee, 1202 B St. N. E.

Brief.

Aug. 27, '87.

Requests permission to remove the remains of all bodies from square 1089 to Graceland and Harmony cemetery. Action: Sept. 6 returned to Commissioners D. C. and attention invited to accompanying letter of this date. C. L. B., vol. —, Sept. 6, '87.

Sept. 8th, 1887.

To the Commissioners of the District of Columbia.

Gentlemen: Referring to endorsed communication No. 140,871, Commisioners' office, letter of W. H. Grimshaw, trustee, asking permission to remove bodies from square 1089, between 16th and 17th, C and D streets S. E., formerly known as Ebenezer and Beckett cemeteries, I have the honor to report that the grounds seem at the present time to be without any care or attention. The dilap-
180 idated fences have mostly been removed, as have many of the head-boards, and stock wander at will over the graves

I think it would be well to have the remains interred here removed to some other cemetery, but before doing so means should be taken to advise all persons interested, in order that friends or relatives may be enabled to remove such bodies as they may desire. Then I think that such remains as can be located and identified should be first removed upon regular disinterment and transfer permits. After the work has progressed as far as possible in this way the question of a general permit might be considered.

As there has been considerable trouble in the past regarding the authoritative guardianship of these grounds, it would be well to require of Mr. Grimshaw proper proof of his authority as trustee.

Very respectfully, SMITH TOWNSHEND, M. D.,
Health Officer.

Feb. 2, '87. 15656, 15666. Grimshaw, Wm. H., 1202 B St. N. E.

Brief.

Jan'y 28, '89.

Having made application some time ago to remove the remains from the Ebenezer and Union Beneficial cemeteries (square 1089), requests that a permit be granted in order that he can have the remains removed during cold weather, &c. Action: Feb'y 13, ret'd to Commissioners D. C. Attention invited to accompanying letter and permit of this date. See Commissioners' and Misc. Letter Books, 1889.

FEB'Y 13TH, 1889.

To the Commissioners of the District of Columbia.

GENTLEMEN: Referring to endorsed communication No.
181 154,103, Commissioners' office, letter of William H. Grimshaw, requesting permission to remove remains of persons interred in the old burying ground which occupies square 1089, I have the honor to make the following report:

On Sept. 8th, 1887, I presented a statement of this case to the Commissioners. I then said that it would be well to have the remains interred here removed to some other cemetery, but before doing so advised that means should be taken to give such publicity to the fact that such action was contemplated, that all parties interested might be properly informed on the subject.

When permission was asked the last time I proceeded to make inquiry as to whether or not proper pains have been taken to advise, as far as possible, all persons who might be interested in the proposed removal. I find that the fact has been repeatedly announced from the pulpit of the churches attended by those people most likely to have friends or relatives buried in these grounds, and in addition to this suitable notice has been given through the columns of the public press. I am therefore of the opinion that there is not necessity for a longer delay in this matter, and would recommend that the permit be granted.

I enclose herewith special permit for the approval of the Commissioners.

Very respectfully,

[SEAL.] SMITH TOWNSHEND, M. D.,
Health Officer.

HEALTH DEPARTMENT, D. C., *Sept.* 24, '89.

I hereby certify that the foregoing are true copies from records of this office.

J. C. McGINN,
Chief Clerk.

182 EXHIBIT J. F. N. W. No. 2.

Filed April 14, 1890.

A book containing the constitution of the [Ebenezer]* Beneficial Society, November 18th, 1841.

* * * * * * *

Constitution.

We, the undersigned, have resolved to form ourselves into a Union.
society to be denominated and known by the name of the [Ebenezer]* Beneficial Society of the City of Washington, D. C., and for the government of the same do make and ordain the following rules and regulations:

[*Words enclosed in brackets erased in copy.]

Article I.

The officers of this society shall consist of a president, vice-president, secretary and assistant secretary, treasurer, five directors, and three stewards, to be elected annually by ballot.

Art. II—Of the president.

It shall be the duty of the president (or in his absence the next presiding officer) to preside at all meetings of the society and to call special meeting- on the application of seven members.

Art. III—Of the secretary.

The secretary shall attend all meetings of the society and board of directors and keep a full record of all transactions appertaining thereto. He shall also countersign all orders drawn on the treasurer.

Art. IV—Of treasurer.

The treasurer shall receive all monies paid in for the use of the society and give to the directors a receipt for the same. He shall furnish to the society, at their stated meetings, once in three 183 months, an accurate statement of the funds entrusted to his charge. Previous to the treasurer entering on the duties of his office he shall execute a bond, with satisfactory security, to the president and directors for the faithful performance of his trust in the sum of — dollars.

Art. V—Of the directors.

It shall be the duty of the directors to report all members attempting any imposition upon the society within their knowledge to the president for the consideration of the society. They shall receive all monies from the [society]* secretary and pay it over to the treasurer.

Art. VI—Of the stewards.

It shall be the duty of the stewards to visit infirm members applying for relief, to receive and apply to the relief of sick and infirm members each week the money [that]* that shall be appropriated for that purpose, and on the death of any member they shall immediately inform the president and secretary of the same.

Art. VII—Time of meeting.

The society shall meet on the [last Monday]* first Tuesday of every month, and all absentees at the second roll-call (which shall be immediately after the first) will — fined [three]* 25 cents, unless sick or absent from the city.

[* Words and figures enclosed in brackets erased in copy.]

Art. VIII—Admission of members.

Any person wishing to become a member of this society must be recommended by one or more members to be a man of good morals; his application for membership must be handed in at a stated meeting in writing, accompanied with one-half of the entrance fee, when a committee of three shall be appointed to investigate his character, &c., and report at the next stated meeting, when
184 he shall be balloted for, and if two-thirds of the members present shall vote in his favor he shall be duly elected a member of this society. Upon the admission of a member he shall sign the constitution and pay into the hand of the secretary the remainder of the entrance fee, the whole amount of which shall be [fifty cents]* $\overset{\$5.00}{[5]}$*. If any member fails to pay his dues to the amount of $1.50 he shall forfeit his membership. The society may at any meeting, stated or special, expell or suspend a member for immoral conduct that may be injurious to health or render him burdensome to the society or for an attempt to impose on it, provided that two-thirds of the members present concur in such expulsion or suspension.

Art. IX—Of benefits.

Any person who has been a member of this society for twelve months and is clear of the secretarie's books and continues [to]* so to be may, upon application, receive the sum of $1.50 [for the $\overset{\text{per}}{\text{first}}$]* $\overset{\text{during}}{\text{week}}$ [of]* his indisposition [and 25 cents a day thereafter, Sunday excepted]* during the continuance of the same. At the death of any benefit member the sum of — dollars shall be paid out of the funds of the society towards defraying the funeral expenses, and at the next stated meeting thereafter a contribution of fifty cents for each and every member shall be paid to the widow, orphan children, or legal representative of such deceased member [an extra contribution]* from the funds of the society, and fifty cents [by ea-]* shall be paid by each member at the same meeting into the funds of the society, and at the second stated meeting after the death of such member an extra contribution of — cents to replenish the funds. Any expelled member shall have refunded to him one-fourth of the money he has paid into the funds of the society.

Article X.

The annual election for officers of this society shall be
185 held in —— of each year, and officers so elected shall enter upon their duties in the month following.

Article XI—Of the substantiality of this institution.

Whilst six members of this institution unites for its continuance it shall not be broken.

[*Words and figures enclosed in brackets erased in copy.]

By-laws.

SEC. 1. Order of business: When all the members are present, at the time appointed the president shall call the society to order and preceed to business.

SEC. 2. Roll-call, and each member pay his monthly dues, twenty-five cents, and any other arrears. Immediately after which the roll shall be called again.

SEC. 3. Minutes of the preceding meeting to be read.

SEC. 4. Committees of investigation to make report.

SEC. 5. New members to be balloted for and admitted to sign the constitution and pay entrance fee.

SEC. 6. Petitions for membership to be presented.

SEC. 7. Committees make report and deferred business next in order.

SEC. 8. Election of officers.

SEC. 9. The president shall not have the privilege to make a motion or take part in any debate while acting as chairman, but shall in case of a tie give the casting vote.

SEC. 10. When two or more members rise at the same time to speak the president shall decide who shall proceed.

SEC. 11. The chairman shall appoint all committees unless otherwise ordered by a vote of the society.

SEC. 12. Any member leaving the society before an adjournment takes place without permission from the president or chairman will incur a fine of 12 cents.

186 SEC. 13. No member shall be interrupted while speaking unless by the president, and any member refusing obedience when called to order will incur a fine of 12 cents appearing at any meeting.

SEC. 14. Any member — under the influence of spirituous liquor or who shall use profane, indecent, or abusive language shall be fined 25 cents.

[SEC. 15. If any member shall decease prior to his becoming a benefit member he shall be buried by the members of this society without taking it out of the funds.]* Aug. 22, 1848.

1848. At a called meeting of the society—

Resolved, That for the peace of the society and for the benefit and good government of our society if any member or members shall personate or abuse the society or members and refuse to obey the call of the president he shall be brought before the next monthly meeting, and he or they shall make all suitable acknowledgment and amendment, and if he or they shall refuse positively to give the required satisfaction he or they shall by a vote of 2-thirds *shall* be expelled from the society.

his
RICHARD x MIDDLETON.
mark.
SAMUEL MIDDLETON.
JOHN F. N. WILKINSON.

May 1st, 1849.

[* Words and figures enclosed in brackets erased in copy.]

By-law.

Moved and carried that all members belonging to the Union Beneficial Society shall attend all called meetings, if well and in the city. He that fails to comply shall pay a fine of twenty-five cents for each and every offence. No credit shall be given to any member's donation while their remains a fine or fines against him.

* * * * * * *

187 WASHINGTON, *Dec. 4th*, 1855.

At a meeting held for the election of officers for the Union Beneficial Society to serve the ensuing year 1856 when the following-named Persons was unanimously elected to serve

Richard *Middleton, President.*
Levy Neale, *Secretary.*
Henry Dolson, *Treasurer.*

* * * * * * *

WASHINGTON, *June 11th*, 1867.

Met at the house of Mr. Richard Middleton to meet Mr. William Becket to hear his Report and to receive the monies that he has got in hand belong to the society But he failed to come to the meeting or send any word why he did not come.

The following members were *present*
p Richard Middleton
p Daniel Simms
p Philip Wells
p Charles Gray
a Wm. Beckett absent
a Chas. Thomas
James Allen

AUGUST 5TH, 1862.

At the regular monthly meeting of Union Beneficial Society the sexton of the Burial Ground made the following Report to the Society for the quarter ending July the first 1862

The sum of 24 dollars and 50 cents Amount of monies received for Graves by him and paid over to the trustees—surplus money Divided among 13 members 1.90 cts. each.

Present at the meeting

Josias Lee	Wm. Beckett
Daniel Simms	Chas. Gray
Rich'd Middleton	Fielder Freeman
Phil Wells	Aquilla Simms
Wm. Barton	

188	By cash p'd to Levi Neale	3	00
	" " p'd in to the treasurer	4	85
	" " paid in to Aquilla Simms	1	50
	" " p'd to A. H. Parry for services		25

191 The applications of Mr. Sam'l Middleton and Sidney W. Herbert were received
Adopted Nov. 5th 1867

WASHINGTON CITY, *Nov. 5th*, 1867.

At a Regular meeting of the Union Beneficial society the following members were present and answered to roll-call—
Rich'd Middleton P. Pres't.
Daniel Simms P.
Philip Wells P.
Charles Gray P.
Wm. Beckett Sr. *a.*
From Charles Thomas *a.* 2.50.
James Allen P.
Mr. Sam'l Middleton joined P. P'd $15.00 in full up to date a member in full up to date
Mr. Sidney Herbert joined P.
Nov. 5th, '67.—Wm. Barton's bill paid to date in full—$5 50 cents by the society—
By cash paid secretary 50 cts.

WASHINGTON CITY, D. C., *February 4th*, 1868.

At a regular meeting of the Union Beneficial Society, held on the above date, the President called the meeting to order, and the meeting was then opened with singing and prayer by brother Daniel Simms. The roll of officers was then called and the following members were present. Bros. Richard Middleton, Daniel Simms, Charles Gray, Wm. Beckett present by proxey Phillip Wells, Charles Thomas, and James Allen, absent Samuel H. Middleton, at this stage of the meeting, Bro. Wm. Beckett, paid into the society the sum of thirty-one dollars and fifty cents (31.50) that he received for sale of burial lots, on motion of D. Simms that the sum of fourteen dollars be deducted from the amount and the same be placed to the ac-
192 counts of each member as his dues, and that the balance seventeen dollars and fifty cents (17.50) remain in the general funds of this society each member was then credited with his dues in full to date.

Richard Middleton.....	$2 00	Daniel Simms..... ..	2 00
Charles Gray.....	2 00	Wm. Beckett.....	2 00
Phillip Wells....	2 00	Charles Thomas..... ..	2 00
James Allen	2 00		

After which the application of Mr. John F. N. Wilkinson accompanied with $15.00 was read and received, and on motion of Wm. Beckett that Mr. John F. N. Wilkinson, be and he is hereby received as a full member of this society, carried unanimously their being no further business the society then adjourned with the benediction.

RICHARD MIDDLETON, *President.*

J. F. WILKINSON,
Sec'ty pro Tem., for S. H. Middleton.

WASHINGTON CITY, *December 22d*, 1868.

At a meeting of Union Beneficial Society held on above date Dec. 22d '68, the meeting was called to order by the President (Rich'd Middleton,) and was opened with singing and Prayer By Bro. Charles Thomas, the roll of the Officers and members, was then called, and all were present and answered to their names as follows, Rich'd Middleton, Daniel Simms, Phillip Wells, William Beckett, Chas. Gray, Charles Thomas, James Allen, Sa'l H. Middleton and John F. N. Wilkinson, the proceedings of the last meeting was read, and was adopted by a unanimous vote. Bro. Wm. Beckett at this stage of the meeting, paid over to the society the sum of one hundred eighteen dollars and fifty cent. in lawful money, the same being the amount collected from the sale of "*Burial Lots*," he also paid two dollars and fifty cents to the society which was due to them on his old account, S. H. Middleton, paid in seventy-five cents for Dues to February 4th 1868, Jno. F. N. Wilkinson paid in seventy-five cents for dues to May 1868, making a total of one hundred twenty-
193 two dollars and fifty cents (122.50) Bro. Beckett presented a bill to the amount of eighteen dollars and eighty-five cents for repairing the fence enclosing the ground, on motion of D. Simms, that the bill be paid, and that a draft be drawn on the treasurer for the amount carried, the next question was how much do the members owe to the books, the acting secretary peruised the book and ascertained the am't, due to be twenty-four dollars (24.00) and on motion of Bro. S. H. Middleton, that the sum of twenty-four dollars (24.00) be deducted from the amount received, and the same be placed (in proportionally) 1 to *each member's dues*, carried, and the sec't'y credited each member with the amount as follows:

Rich. Middleton.....	$2 75	W. Beckett.....	2 75
Daniel Simms.....	" 2 75	C. Gray.....	$2 75
Phillip Wells.....	" 2 75	C. Thomas.....	2 75
Jas. Allen.....	" 2 75	S. H. Middleton.....	2 75
Jno. F. N. Wilkinson....	" 2 00		
Total.....			$24 00

The next question was, how much monies was in the hands of the Treasurer, the secretary on looking over the books found the amount to be seventy-six dollars and fifty cents (76.50) on motion of S. H. Middleton, that hereafter there shall always remain in the hands of the Treasurer one hundred dollars ($100.00) which sum shall be applied for the decent interment of the members of this association carried, on motion of S. H. Middleton, that the sum of twenty-three dollars and fifty cents (23.50) be paid over to the Treasurer (R. Middleton) and the remainder, Eighty dollars and fifteen cents (80.15) be equally divided among the members (accepting from said dividend the names of S. H. Middleton and John F. N. Wilkinson carried, the amount was then by the secretary divided in seven parts and was by him paid to each as follows Bro. R. Middleton $11.25 D. Simms, 11.25, Wm. Beckett $11.25, P. Wells $11.25, C. Gray $11.25 C. Thomas $11.25, J. Allen $11.25, making

$78.75, and leaving a surplus of one dollar and forty cents ($1.40) which was on motion paid to Bro. R. Middleton, for fuel and lights,

Bro. S. H. Middleton stated that a previous meeting the
194 application of Mr. Sidney Herbert was received and according to the proceedings of a previous meeting he had joined this society. But upon examination, found that he had not paid his fee $15.00 as the constitution demanded of him, and Therefore, moved that the name of Sidney Herbert be eraced from the books and that all proceedings in relation to him be and is hereby reconsidered, this motion was unanimously adopted, the President here stated that we needed another Trustee, upon this statement Bro. D. Simms, offered the name of Samuel H. Middleton, who, was on motion unanimously Elected Trustee to fill the vacancy caused by the Death of William Barton, Bro. John F. N. Wilkinson was next unanimously Elected Secretary of the Society, the secretary then paid over to the Treasurer, Rich. Middleton, the sum of $23.50, and the association then adjourned with the Benediction.

JNO. F. N. WILKINSON, *Secretary.*

"Obituary."

WASHINGTON CITY, D. C.,
9 O'CLOCK A. M., *March 21st*, 1869.

At a call meeting of the Union Benevolent Association, held on the above date at Bro. Wilkinson's the Secretary called the roll, and the following-named members were present, Bros. D. Simms, Wm. Beckett, C. Gray and J. F. N. Wilkinson, Vice-President then stated that this meeting was called to unite our bereavement with that of the Family of our much-beloved and late president Richard Middleton and also to make suitable arrangements for his burial which will take place this afternoon at 2 o'clock P. M. on motion of J. F. N. Wilkinson, that the sum of fifty dollars (50.00) be and the same is hereby appropriated out of the general funds of the society, and the same be paid over to the family to defray his funeral expenses carried unanimously. Resolved that the secretary will draw a draft upon the Treasurer for fifty dollars in favor of the family of

our Late Bro. R. Middleton. Resolved that the secretary
195 is ordered to hire one hack for the use of the society. The society then adjourned to meet again this day at 2 o'clock P. M. to attend the funeral of our late Brother and President Richard Middleton.

JNO. F. WILKINSON, *Secretary.*

"Obituary."

2 O'CLOCK P. M., *March 21st*, 1869.

Persuant to adjournment this morning The Union Benevolent Association convened at the Residence of our late President, to pay their last tribute of respect to their departed Brother. After the religious exercises at the house was over his remains was escorted

to Israel A. M. E. Church, by the *U. B. Association* and the *Sons and Daughters* of the Order of *Love* and *Charity* and there rested to hear the last final discourse over his remains which was delivered by the Rev. J. D. S. Hall, Pastor in charge, when after which, his remains was then escorted and rested finally, in the *grave-yard* of the Association when the last ceremonies was performed by the order of Love and Charity. Members present Bros. D. Simms, Wm. Beckett, P. Wells, C. ——, Jas. Allen, C. Gray, S. H. Middleton, as Mourners and Jno. F. N. Wilkinson.

WASHINGTON CITY, D. C., *April 6th*, 1869.

At a regular Quarterly Meeting of the Union Benevolent Association held on the above date at the residence of Bro. Wilkinson the meeting was opened with singing and Prayer, by Bro. Chas. Thomas, the roll of members was called and all was present, as follows Bros. D. Simms, Wm. Beckett, P. Wells, C. Thomas, C. Gray, Jas. Allen, S. H. Middleton and J. F. N. Wilkinson, the Proceedings of the last meeting was read and approved, Vice-President Simms here stated that in the death of our much-beloved President, the association was without a President and Treasurer, Bro. D. Simms was then nominated and unanimously elected President of the U. B.
196 Association receiving (7 votes) Bro. Simms, here stated that as our late brother had been such a faithful and honest Treasurer that he would like that office to remain in the family and therefore, nominated Bro. S. H. Middleton for Treasurer of the association a vote was taken and S. H. Middleton received seven votes, D. Simms and S. H. Middleton, was then declared elected. The report of Sexson being next in order. Bro. Wm. Beckett, the Sexson, paid into the society the sum of eighty-nine dollars it being the amount accrued for the sale of grave lots, the same was attested by Trustee Middleton, the report of the sexton was received, on motion of C. Gray, the sum of six dollars, was appropriated from the amount and the same be placed to the monthly dues of the members, carried Mrs. Chew's bill (am't (3.00) for hack for the funeral of our late President was read rec'd and ordered to be paid on motion it was resolved that the sum of forty-four dollars be appropriated out of the am't received, and the same be deposited with the Treasurer so as to make up the deficiency of fifty dollars, that was appropriated for the funeral of our late member, the secretary, then stated that there was a balance of thirty-six dollars, and of which, on motion it was resolved that it be divided into eight equal parts and distributed to the members, the secretary then declared a dividend of four dollars and fifty cents $4.50 which was paid to each member, the sum of one hundred dollars was then paid over to the Treasurer Elect, and his receipt taken for the same, Bro. J. F. N. Wilkinson, then offered the following Preamble and Resolutions, which was adopted. Whereas, It has pleased Almighty God in his wise providence to remove from our Midst our late Bro. Richard Middleton, to a better land, where sorrow intrudes not, Therefore, Resolved, That in his death the *Union* Benevolent Association, have lost a worthy President, and member, a faithful Treas-

urer, and an esteemed friend and brother that was beloved by all Resolved. That we mourn his loss, and extend our condolence to his bereaved family in this their said bereavement, the Association was then adjourned by the Benediction.

JNO. F. N. WILKINSON, *Sec'ty.*

DAN'L SIMMS, President.

197 WASHINGTON CITY, D. C., *September 7th*, 1869.

The Union Benevolent Association met per order of the President on the above date, Members present Bros. D. Simms, P. Wells, C. Gray, Jas. Allen, S. H. Middleton, and J. F. N. Wilkinson, the proceedings of April 6th and March 21st was read and approved of. The President stated that this meeting was called to receive the returns from the sexton Bro. W. Beckett, and he not being present, there should be some action taken in the matter. The secretary at the instance of the president drew up and offered the following resolution. Resolved, That William Beckett, Sexton of the Union Benevolent Association, be and is hereby ordered to pay over to the Trustees, of said Society all monies that you now have in your possession (or may hereafter receive belonging to said Society,) by the first of October 1869, so that the said Trustees, (Chas. Gray & Samuel H. Middleton,) may pay the same over or into the hands of the Treasurer, and also, in the future, you are further notified and ordered, that all monies you may receive for the sale of Graves, you will pay the same immediately over to the Trustees and take their receipt for the same, so that their may be regular quarterly settlement of the affairs and transaction of the association.

The meeting then adjourned

JOHN F. N. WILKINSON.

WASHINGTON CITY, D. C., *November 16th*, 1869.

At a call meeting of Union Benevolent association held on the above date the meeting was opened with singing and Prayer by the President, members Present, Bro. D. Simms, J. F. N. Wilkinson, C. Gray, S. H. Middleton, Wm. Beckett. The Trustees paid over to the secretary the sum of ninety-nine dollars (99.00) which sum, the Secretary divided into eight equal parts of twelve dollars and thirty-seven and a half cents (12.37½) and paid the same to each
198 member of the association.

The Association then adjourned with the Benediction.

D. SIMMS, *President.*
JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *January 4th*, 1870.

At a regular (Quarterly) meeting of the Union Benevolent Association, held on the above date, Present, D. Simms, President, C. Gray, J. F. N. Wilkinson, the meeting was opened by Prayer By Bro. Simms, Trustee C. Gray paid over to the Secretary, the sum of seventy-two dollars and eighty cents ($72.80) which he received from

the sexton, the Secretary then divided the said ($72.80) into eight parts and paid each member of the association his proportion $7.85 the association then adjourned.

JNO. F. N. WILKINSON, *Sec't'y.*

WASHINGTON CITY, D. C., *April 14th*, 1870.

At the Regular quarterly meeting of the Union Benevolent Association, held on the above date, members present, D. Simms, Wm. Beckett, C. Gray, J. F. N. Wilkinson, the meeting was opened with prayer by the president, The Sexton, Bro. Beckett, at this stage of the meeting, paid into the society the sum of thirty-six dollars net receipts for the past quarter, the Secretary divided the said $36.00, into eight equal parts, of $4.50 each, and paid the same to each member, the question as to the cost of grave sights was next taken up in order, when it was determined, that the cost for a grave for an adult should be *five dollars* and that of children two dollars and fifty cents, (2.50) Resolved that the Secretary send notices to the different churches notifying them of the same.

The association then adjourned.

JNO. F. N. WILKINSON, *Sec't'y.*

199 WASHINGTON CITY, D. C., *October 4th*, 1870.

At a Regular Quarterly meeting of the Union Benevolent Association held on the above date, Bros. present D. Simms, C. Gray, J. F. N. Wilkinson and S. H. Middleton, trustee S. H. Middleton, paid over to the Secretary, the sum of seventy dollars received from the sexton, the said $70.00 was by the secretary divided into eight equal parts of $8.75 each, and paid over to the members, and the association then adjourned.

JNO. F. N. WILKINSON, *Sec't'y.*

WASHINGTON CITY, D. C., *July 5th*, 1870.

The Union Beneficial Association, held its regular quarterly meeting on the above date and was opened with prayer, members Present, D. Simms, C. Gray, J. F. N. Wilkinson, the proceedings of the preceding meetings was read and approved, Bro. Simms stated that Mr. Arthor Chew who had petitioned for membership at a previous meeting, was in waiting, and if received, would pay his entrance fee, after some further remarks, it was moved and carried, that Mr. A. Chew be received as a member of the association, C. Gray voted by proxy for Wm. Beckett, and D. Simms, voted by Proxy for Chas. Thomas, and Jas. Allen, Mr. Chew, was then admitted, and paid his entrance fee of $15.00 C. Gray paid over to the secretary the sum of forty-five dollars ($45.00) am't received from the Sexton, the whole amount ($60.00) was then divided into eight equal parts of $7.50 each, and the same was paid over to the members by the Secretary.

The association then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *Oct. 1st*, 1870.

There was no meeting of the association.

JNO. F. N. WILKINSON, *Secretary.*

200 WASHINGTON CITY, D. C., *January 3d*, 1871.

The Union Beneficial Association held its regular quarterly meeting on the above date, Bros. present, D. Simms, P. Wells, C. Gray, J. Allen, J. F. N. Wilkinson, A. Chew. The proceedings of the last meeting was read and approved, after which C. Gray, paid into the society, the sum of thirty-nine dollars, which he received from the Sexton. The Secretary, devided the same into nine equal parts of $4.33 each, and paid the said $4.33 to each member, the association then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *April 18th*, 1871.

At the regular quarterly meeting of the Union Benevolent Association, held on the above date, members present, D. Simms, C. Gray, J. F. N. Wilkinson, A. Chew, the meeting was opened with prayer, when after which C. Gray, paid into the association the sum of ($19.44) which he received from the sexton, the same was devided by the secretary into nine parts, and was paid over to the members, each of whom received the sum of two dollars and sixteen cents ($2.16). The question then come up how we should provide for the payment of the pavement about to be laid in front of our Ground, after some debate and suggestions. It was unanimously Resolved, That we will have no more dividend of monies, until after the *pavement* is finally settled, and disposed of, the association then adjourned.

JNO. F. N. WILKINSON, *Sec'y.*

"Obituary."

WASHINGTON CITY, D. C., *July 5th*, 1873.

At a Special meeting of the Union Beneficial Association held on the above date, at the residence of Mr. Jno. F. N. Wilkinson, No. 352 E. St. S. W., members present, Daniel Simms, Wm. Beckett, S. H. Middleton, J. F. N. Wilkinson, The President said that the object of this meeting was to consider what was best to be done in regard to our deceased Brother and Member Charles Gray.

201 On motion it was resolved that the association attend the funeral.

On motion it was resolved, that the sum of fifty dollars ($50.00) be appropriated, and paid over to the wife of the deceased brother for his burial.

The association then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *August 14th*, 1871.

At a call meeting of the Union Beneficial Association, held on the above date, the meeting was called to order by the President, D.

Simms. Prayer was offered by Bro. A. Chew, the proceedings of April 18th 1871—was read and approved. The bill for the pavement on the North Front of the Burial Ground, amounting to ($1,035.64) one thousand thirty-five dollars and sixty-four cents was read.

On motion it was resolved, the bill was put in charge of Bro. Beckett, and that he pray the Legislature to relief us of the same.

On motion of S. H. Middleton, that the Secretary draw up a petition of relief to be presented to the Legislature carried.

On motion of S. H. Middleton, that there be a committee of two consisting of Bros. Beckett, and Wilkinson, to visit the *visit the* Legislature in our behalf, carried Bro. Middleton, was on motion of A. Chew added to the committee.

Bro. Beckett reported that he had in hand forty-two or forty-three dollars.

The meeting then adjourned to meet on the 29th inst.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *July 8th*, 1873.

At a regular meeting (quarterly) of the Union Beneficial Association, held on the above date, at the residence of Bro. Wilkinsons, No. 352 E St. S. W. Bro. Present, were, D. Simms, President,
202 J. F. N. Wilkinson, Sec't'y, S. H. Middleton, Treasurer, and A. Chew.

The President called the meeting to order, and prayer was offered by Bro. A. Chew.

The Secretary stated that the Sexton, Bro. Beckett had paid over to him the sum of three hundred and thirty-four dollars and fifty cents, ($334.50).

The secretary presented the bill of J. McCowley am't $7.00 for two hacks for Bro. Chas. Gray's funeral.

On motion of Bro. A. Chew, that the sum of seven dollars be appropriated out of the funds of the association to pay said bill, carried.

The sum of three hundred twenty-seven dollars and fifty cents ($327.50) was paid over to S. H. Middleton, the treasurer.

And the association then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *February 15th*, 1875.

At the regular Annual meeting of the Union Beneficial Association, held at the residence of Bro. D. Simms, on the above date, the President called the meeting to order, and was with prayer by Bro. Chew, members present were D. Simms, J. F. N. Wilkinson, S. H. Middleton, Wm. Beckett, A. Chew.

The proceedings of July 5th, and 8th, 1873, was read and approved.

The Sexton Bro. Wm. Beckett, reported to the association that he had received *received* Since we last met the sum of four hundred dollars ($400.00.)

The president said that himself and some others of the association was in need of some aid from the Society.

And on motion of Bro. A. Chew, that the sum of two hundred dollars be devided among the members—carried.

203 The Secretary then devided the two hundred dollars in seven parts and each member's portion was $28.57 and the Sexton Bro. Beckett was ordered to pay the same to the Secretary, and the association then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *May 16th*, 1875.

At a Special meeting of the Union Beneficial Association held on the above date at the residence of Bro. A. Chew—Present P. Wells, J. Allen, S. H. Middleton, J. F. N. Wilkinson, and A. Chew. The meeting was opened with Prayer. The Secretary said that he called the meeting for the purpose of considering the condition of the President Bro. D. Simms, who was now lying very sick.

Bro. Chew then stated that from information he had received from Brother Simms' son, that Bro. Simms was in need of some help from the society, that he had called to see him and found him very low—whereupon

On motion of S. H. Middleton, that the sum of twenty — be appropriated for the relief of Bro. Daniel Simms, carried.

On motion of S. H. Middleton, that the secretary draw a draft upon the Sexton, Wm. Beckett for the said twenty dollars—and that the same be paid to the Secretary carried.

The meeting was then adjourned.

A. CHEW, *Acting President.*
JNO. F. N. WILKINSON, *Secretary.*

"Obituary."

WASHINGTON CITY, D. C., *May* —, 1875.

At a special meeting of the Union Beneficial Association held on the above date, Present P. Wells, J. Allen, A. Chew, W. Beckett, S. H. Middleton, Jno. F. N. Wilkinson. This meeting was to attend the funeral of our late President, D. Simms, who was rested in Ebenezer Church, and $50.00 was paid to his son Jeremiah

204 Simms for the burial of his father by Bro. S. H. Middleton, The Treasurer.

JNO. F. N. WILKINSON, *Sec'y.*

WASHINGTON CITY, D. C., *September 7th*, 1875.

At a regular meeting of the Union Beneficial Association, held at the residence of J. F. N. Wilkinson No. 901 E St. S. W. On the above date, the meeting was called to order by the Secretary and the meeting was opened with singing and Prayer by Bro. P. Wells. Secretary Wilkinson was in the chair. Present P. Wells, J. Allen, W. Beckett, S. H. Middleton, A. Chew.

The proceedings of May 16th was read and approved.

A communication from Mrs. Chloe Ann Gray asking for a share of the undivided money on hand at the date of the death of her husband Chas. Gray, was read and received and after some debate it was on motion of W. Beckett, laid over for further consideration. Bro. W. Beckett, reported that he had received for grave sites since January 1st 1875, one hundred and twenty-three dollars—which added to the $180.00, in his possession made a total of $303.00 that was due by him to the association.

Bro. Beckett said further, that as other societies was paying ten per cent. on the dollar for the collection of its monies he claimed the same for his services. Whereupon on motion of Bro. Wells, that this association do allow the sexton ten per cent. on the dollar on all monies collected for the association carried; On motion of S. H. Middleton, that when we adjourn, we adjourn to meet on next Tuesday evening for the purpose of electing officers and settleing up the money affairs of the association, carried.

The Association then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *September 14th*, 1875.

At an adjourned meeting of the Union Beneficial Association held on the above date at the residence of J. F. N. Wilkinson
205 901 E St. S. W.

The meeting was called to order by the Secretary (J. F. N. Wilkinson) and was opened with prayer by Bro. Allen, Present P. Wells, J. Allen, W. Beckett, S. H. Middleton, Wilkinson and A. Chew.

The proceedings of Sept. 7th was read and approved. The Secretary (in the chair) said that as per adjournment of the last meeting, the next business in order was the election of officers of the Association.

On motion of S. H. Middleton, that we do now go into the election of officers, carried.

Bro. P. Wells was nominated, and on motion was unanimously elected the President of the association, he receiving (6 votes).

Bro. A. Chew was nominated and elected Vice-president (6 votes).

Bro. Jno. F. N. Wilkinson, was nominated and re-elected Secretary.

Bro. S. H. Middleton " " and re-elected Treasurer.

Bro. S. H. Middleton, was re-elected Trustee rec'd 6 votes.

Bro. Jno. F. N. Wilkinson, was elected Trustee " 6 votes.

Bro. W. Beckett, was elected General Superintendent of the ground.

Bros. Jas. Allen, A. Chew and Bro. W. Beckett, was elected as Board of Directors of the Association.

Bro. Beckett here stated that he was not prepared to pay over the money tonight but would do so soon.

The meeting then adjourned to meet again in November—weather permitting.

JNO. F. N. WILKINSON, *Secretary.*

206 WASHINGTON CITY, D. C., *November 2nd*, 1875.

At a regular meeting of the Union Benevolent Association held on the above date at the residence of Bro. Wilkinson, No. 901 E St. S. W. Members present was Phillip Wells President, A. Chew, Vice-President, Jno. F. N. Wilkinson, Sec't'y, S. H. Middleton, Treasurer—Wm. Beckett.

The meeting was opened with prayer by the President the proceedings of Sept. 14th, was read and approved. Bro. Beckett paid in $1.50.

The Secretary here reported that he had received from Bro. Beckett during the quarter $30.50.

The next business in order being the settlement of the Superintendent, when Bro. Beckett said that he was sorry to say that he was not prepared to settle up tonight, from the fact that he was disappointed in not getting or collecting some outstanding monies due him, and give his word that he would pay it, and that the association should not loose one cent of the money.

On motion of Bro. A. Chew, that Bro. Beckett, report at our next meeting carried. On motion it was relsoved, that the sum of thirty doll-rs be devided among the members.

Bro. Beckett, Paid $5.00 on his accounts, and the meeting then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *February 1st*, 1876.

At a regular meeting of the Union Beneficial Association, held February 1st 1876—at the residence of the Sec'y Bro. Wilkinson. Members Present was P. Wells, S. H. Middleton, Wm. Beckett, J. F. N. Wilkinson.

The meeting was opened with prayer by the President the proceedings of November 2nd 1875 was read and approved

207 A communication from Mrs. Teressa Chew, asking the association to pay her what money was due her late husband was read and received and the secretary was on motion ordered to answer the same.

The sec'y reported that he had received twenty-six dollars since the last meeting of the society.

Bro. S. H. Middleton, presented the name of Mr. W. P. Ryder for membership which was on motion placed on file until our next regular meeting.

Resolved that the twenty-six dollars be devided into five equal parts, being $5 each On motion it was resolved—That the sum of fifty dollars be appropriated out of the funeral fund for the family of our late member, A. Chew, carried. The meeting then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON, D. C., *March 6th*, 1876.

The Union Beneficial Association met on the above date. The Sexton Bro. Beckett, paid in eighteen dollars—($18.00) which was

on motion devided into five equal parts, being $3.60 each, and the meeting then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *December 5th*, 1876.

The Union Beneficial association met at the residence of the sec'y on the above date. Present Middleton, Beckett, and Wilkinson.

Bro. Beckett paid in to the secretary the sum of forty-nine dollars and fifty cents, ($49.50).

Bro. Beckett presented a verbal bill to the amount of ten dollars for repairing the grounds—

Resolved. That the bill be paid.

The sum of forty dollars was then devided into five equal parts being $8.00 each.

208 The meeting then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *May 2nd*, 1876.

At a regular meeting of the Union Beneficial Association, held at the house of Bro. J. F. N. Wilkinson, on the above date. Present was Bros. Phillip Wells, President—Jno. F. N. Wilkinson, Sec'y. S. H. Middleton, Treasurer—Jas. Allen director.

The meeting was opened with prayer—and the proceedings of Feb'y 1st, 1876 March 6th 1876 and Dec. 5th 1876 was read and approved of. Adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON, D. C., *July 11th*, 1876.

The Union Beneficial Association met on the date Present P. Wells, J. F. N. Wilkinson, S. H. Middleton, and Wm. Beckett.

The proceedings of the last meeting was approved. The next business being the report of the Janitor Bro. Beckett the Superintendent reported that he had in hand the sum of fifty-four dollars and fifty cents, and paid the same over to the Secretary The same was received and on motion was—divided into five equal parts between the members, being $10.90, each—

Adjourned with the Benediction.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON, D. C., *Sept. 5th*, 1876.

The Union Beneficial Association convened on the above date at the Secretary's Bro. Beckett the Superintendent said that he had collected the sum of twenty-one dollars and fifty cents, and paid the same over to the Secretary.

On motion that the sum of twenty-one dollars and fifty cents be divided into five equal parts—being $4.30, each.—Adjourned.

JNO. F. N. WILKINSON, *Secretary.*

209 WASHINGTON, D. C., *August 31st*, 1877.

The Union Beneficial Association met on above date, Wm. Beckett the Superintendent said he had in hand the sum of sixty dollars—The same was paid to the Secretary, and on motion the said amount was divided into five equal parts, being the am't of $12.00 each. Members present was Wells, Beckett, Middleton, Allen and Wilkinson, the meeting then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON, D. C., *December 3rd*, 1877.

The Union Beneficial Association, met on the above date—Present, Wells—Wilkinson, Middleton, Beckett and Allen—

Bro. Beckett, reported that he had in hand the sum of one hundred seven dollars and fifty cents, and paid the same to the Secr'y. He also presented to the association that he had paid out seven dollars and fifty cents for repairs on the ground—

On motion that the sum of seven dollars and fifty cents be appropriated for repairs on Grounds Resolved that the sum of one hundred dollars be devided into five equal parts—being $20.00 each.

The proceedings of July 11th Sept. 5th 1876—August 31st 1877—was approved.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON, D. C., *March 4th*, 1878.

At a meeting of the Union Beneficial Association held at the Secretary's on the above date.

Present Wells, Wilkinson, Middleton, Beckett. Wm. Beckett reported that he had in hand sixty-four dollars and fifty cents, out of which he had paid two dollars for filling up graves—on motion that the sum of two dollars be appropriated for the filling of graves—

Resolved, that the sum of sixty-two dollars and fifty cents be appropriated and devided in five [into]* equal parts—being $12.50 each. Adjourned.

JNO. F. N. WILKINSON, *Secretary.*

210 WASHINGTON CITY, D. C., *June 3rd*, 1878.

The Union Beneficial Association met on the above date, Present, P. Wells, Wilkinson, Beckett, Middleton—The proceedings of Dec. 3d 1877—and March 4th '78—was approved—

Wm. Beckett, reported that he had in hand One hundred five dollars and fifty cents—which was on motion devided into five equal parts among the members—being $21.00 each.

The association then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *Sept. 2nd*, 1878.

The Union Beneficial Association met on the above date at the residence of the Sec'y. Present, P. Wells, Wilkinson, Beckett, and Middleton.

[* Word enclosed in brackets erased in copy.]

Wm. Beckett the Superintendent paid over to the association one hundred fifty dollars and fifty cents which he said was collected from April to Sept. inclusive.

On motion that one hundred fifty dollars be devided among the members, carried, being $30.00 each.

appropriate 25 cts. for the proceedings of June 3d, 1878 was approved. Adjourned.

JNO. F. N. WILKINSON, *Secretary.*

WASHINGTON, D. C., *Dec. 22nd*, 1878.

The Union Beneficial association met on the above date at the Secretary's. Wm. Beckett, reported that he had collected eighty dollars ($80.00) and paid in only $20.00 and said that he retained the sum of sixty dollars to pay for the *fences*—this action of Bro. Beckett, was not approved of—

The twenty dollars was then devided in four parts—being $5.00 each, for Wells—Allen—Middleton and Wilkinson. Adjourned.

JNO. F. N. WILKINSON, *Secretary.*

211 WASHINGTON CITY, D. C., *March 7th*, 1879.

The Union Beneficial association met on the above date at the Sec'y's. Present, Wells, Beckett—Middleton and Wilkinson. Wm. Beckett paid over to the Sec'y Fifty-two dollars ($52.00).

On motion the sum of fifty-two dollars be equally devided in four parts—between Allen, Wells—Middleton and Wilkinson, being $13.00 each. The meeting then adjourned.

JNO. F N. WILKINSON, *Secretary.*

WASHINGTON CITY, D. C., *June 14th*, 1879.

The Union Beneficial Association met on the above date Present, P. Wells, Middleton—Wilkinson, and Beckett.

The proceedings of December 3d 1877, March 4th June 3d Sept. 2nd and Dec. 22nd 1878 and March 7th 1879, was approved.

Bro. Beckett paid in Seventy-four dollars which he had collected the past quarter, the same was devided into four equal parts being *$18.50* each.

N. B. Beckett paid on accounts $23.50. The association then adjourned.

JNO. F. N. WILKINSON,
Sec'y U. B. Asso.

WASHINGTON CITY, D. C., *Sept. 5th*, 1879.

The Union Beneficial Association convened on the above date. Present, P. Wells, Middleton, Beckett and Wilkinson, (4).

Sup't Beckett, made return to the Secretary to the amount of one hundred dollars—which was collected past quarter, and the same was on motion devided into four equal parts, being *$25.00* each.

Bro. Beckett's, ballance due on the $42.00 borrowed was *$25.00*—the meeting then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

212 WASHINGTON CITY, D. C., *December 9th*, 1879.

The Union Beneficial Association met on the above date, Present, Wilkinson Middleton and Beckett.

The proceedings of June 14th and Sept. 5th, 1879, was read and approved.

Wm. Beckett reported that he had collected $61.50 but had used thirty-one dollars and fifty cents of the am't. He paid in $30.00 which was divided equally between, Wells Middleton and Wilkinson, being $10.00 each. The meeting then adjourned.

JNO. F. N. WILKINSON,
Sec'ty U. B. Asso.

WASHINGTON CITY, D. C., *March 18th*, 1880.

The Union Beneficial Association convened on the above date. Present Middleton, Beckett and Wilkinson. Sup't W. Beckett, paid to the Secretary $32.50 stating that there was a ballance in his possession of $42.00 which he retained he being in want of it.

The sec't'y devided the $32.50 equally between P. Wells, Middleton and Wilkinson, being *$10.83* each. The meeting then adjourned.

JNO. F. N. WILKINSON,
Secretary of U. B. Asso.

WASHINGTON CITY, D. C., *March 21st*, 1882.

At a regular quarterly meeting of the Union Beneficial association, held at the residence of the Secretary, No. 901 E street South West on the 21st day of March 1892, at six o'clock, P. M. Present, was Phillip Wells, Jno. F. N. Wilkinson and Samuel H. Middleton, Trustee. The President called the meeting to order the roll was called by the Secretary who informed the President that a quorum was present.

The Secretary Bro. Wilkinson, here said that he had notified the Superintendent William Beckett by note to attend this
213 meeting, but he made no reply thereto.

Trustee S. H. Middleton, was then detailed by the association to go after William Beckett (a distance less than a hundred feet), and request his attendance at the meeting.

Trustee Middleton, then retired from the meeting and returned again in about *ten minutes*, and made the following report. "Mr. President, In obedience to your order I repared to the house of Mr. William Beckett, and requested his attendance at this meeting but he emphatically declined to come, saying he *had no business* there."

The report of Trustee Middleton, was on motion ordered to be recorded as part of the proceedings of this meeting:

The President here stated, that Bro. Beckett our fellow-member and Superintendent, had given him last winter the sum of five dollars, and wanted me to conspire with him to exclude Brothers Middleton and Bro. Wilkinson, and deprive them of receiving benefits but I would not agree with him, and he got mad with me and I have not seen or heard from him since, and he has been selling the

grave lots of the association, and appropriated the monies received therefor, to his own use, and thought that the association should take some steps to put a stop to it.

The following Preamble and Resolutions was then unanimously adopted. Whereas, That William Beckett, the Superintendent of the Burial Ground of the Union Beneficial Association, having violated the constitution, rules and regulations of said association, in not making his quarterly returns to the Secretary of all monies collected by him from the sale of Grave lots in the grounds of the Union Beneficial Association and having appropriated said monies collected by him to his private use:—Therefore, be it Resolved, by the Union Beneficial Association in meeting assembled, that Bro. William Beckett be and is hereby removed from the office of Sexton and Superintendent of the Burial Grounds of the Union Beneficial Association (commonly known as Beckett Cemetery.) situate on C St. South East extending to the corner of 17th St. S. E. from this date the 21st of March 1882.

214 And be it further resolved, that the office of Sexton and Superintendent of the Union Beneficial Association be and is hereby declared to be vacant.

And be it further Resolved, that William Beckett is here notified warned and forbidden to trespass upon the Burial Ground of the Union Beneficial Association, as exerciseing the office of Sexton and Superintendent, nor in any official capacity whatever under penalty of the law of trespass.

And be it further resolved. That William Beckett his agents and sons Daniel Beckett and Ida Beckett, and all other persons employed by the said William Beckett, as grave-diggers, are here notified, warned and forbidden to trespass upon the Burial Grounds of the Union Beneficial Association under penalty of the law of trespass.

And be it further Resolved. That the officer of the Board of health of the D. C. be notified by the Secretary, that William Beckett have been removed from the office of Sexton and Superintendent of the Burial Grounds of the Union Beneficial Association, (improperly known as Beckett's Cemetery, in the square bounded by C and D Sts. and 16th and 17th streets South East in the City of Washington, D. C.) For malfeasance in office, and that the Board of health or the officer in charge of said duty, be requested to refuse all application for permits to Bury in said Burial Grounds from William Beckett, his sons Daniel and Ida, his agents, nor any undertaker, or any person whomsoever unless they produce the written permission of the President, Phillip Wells and the secretary, Jno. F. N. Wilkinson of the said Association. And be it further Resolved. That the Secretary notify William Beckett and all other parties concerned, of the action of this meeting. On motion the Association then adjourned.

JNO. F. N. WILKINSON, *Secretary.*

PHILLIP WELLS, *President.*

215 DEC. 9TH, 1856.

It is moved and Seconded that all monies accruing from the Union Beneficial Burying Ground shall be received by the Trustees and paid over By them to the Treasurer for the use of the Members in the society in their meeting—Carried unanimously

* * * * * * *

WASHINGTON CITY, *Oct'r 17th*, 1854.

A called meeting was held at the usual meeting place To Examined the Deed of the Burial Ground of the Union Beneficial Association of Wash.—Which was found Good

Bro. Middleton Prest. ordered To pay A. H. Parry for Services Rendered To Union Beneficial Society.

* * * * * * *

WASHINGTON, *December 20th*, 1853.

The following members were Elected as Officers to serve for the ensuing year of 1854 of the Union Beneficial Society

Executive Officers.

Richard Middleton, Pres't.
Daniel Simms, Vice
Levi Neale, Secretary.
[Samuel Gant, Assistant.]*
Henry Dotson, Treasurer.

5 Directors.

1st. David Reddin
2nd. William Beckett
3d. Fielder Freeman
4th. William Barton
5th. Philip Wells

3 Stewards.

1st. [Josiah Lee,]* William Barton Navy Yard
2nd. Israel Wallace, Capitol Hill
3d. Daniel Simms, on the Island.

216 [JANUARY, FEBRUARY 7TH.

Elec.]*

FEBRUARY 7TH.

Electid offersers for the year of 1860
Richærd Middleton Presedent
Isrel Wallace vice-Presedent
Levi Neale Secretary
Henry Dotson Treasurer

* * * * * * *

[* Words and figures enclosed in brackets erased in copy.]

JUNE 21ST, 1853.

Any person wishing to become a member of this institution after his character have been approved and shall pay down the sum of fifteen dollars in current money Shall immediately Thereafter become a full member and be entitled to and equal proportion with those that started in the commencement. This is an Amendment to the 8th Article

Adopted Resolution.

WASHINGTON, *January 3d*, 1854.

I hereby move, I Wm. Beckett that persons or person wishing to become members of the Union Beneficial [Society]* Association Must Pay the sum of $15.00 and Remain in the Association three months before they Receive any Surplus money

Seconded by R. Thompkins

Stephen Hall joined under the above Resolution

September 11th 1857. $10 Dollars

* * * * * * *

JANUARY 1ST, 1849.

Amount of monies deposited in the Treasury By the Union Beneficial Society William Barton Treasurer —.

January 1st Deposited in the Treasury $275

JANUARY 3D, 1854.

Union Beneficial Society Received of Stephen Hall $15.00 As his entrance Fee And he is admitted [he]* a full member of the
217 Union Beneficial Society entitled with a full share of those that commenced in the formation of the Society.

* * * * * * *

APRIL THE 16, 1846.

Moved and carried that no member shall receive any credit for his monthly fees untill all his fines are settle

APRIL 18TH, 1846.

Moved and carried that this institution shall sell A lot of grown say eight feet by twelve for the amount of eight dollars in cash

JANUARY 13TH, 1846.

Moved and carried that each site shall be 12 feet by 16 feet, the 12 feet to front the ile

FEB'Y 26TH, 1846.

Moved and carried that all moneys collected from the Beneficial Burial Ground shall be brought forward, and paid to the board once in every 3 months, sexton to be paid in, the same space of time. The sexton shall keep A book, and keep a minuet of each and every grave. The Book shall be brought forward, at the above stated time, the sexton shall be bound for all money from the sale

[* Words and figures enclosed in brackets erased in copy.]

of ground, without he receives A writing order from the Trustee all persons owning ground shall have the priviledge to open their own graves

Washington City, October 6th, 1867.

RICHARD MIDDLETON.

* * * * * * *

JANUARY 13TH, 1846.

Moved and carried that William Becket shall be the sexton of the Beneficial Burial Ground,

Price of graves for children $3.00
for grown persons 4.50

218 The sexton shall be paid one dollar for a small grave and one dollar and fifty cents for grown persons

NOVEMBER 9TH, 1849.

Moved and carried that William Barton shall be the sexton of the [Benaface]* Beneficial Burial Ground.

* * * * * * *

OCTOBER THE 29, 1845.

Moved and carried that ten members shall do business for the constatution

JANUARY 15TH, 1846.

Moved and carried that all members shall attend on the first Tuesday night in every month

* * * * * * *

The Society have this twenty [fourth]* 25th day of April, 1842, deposited in the hands of Philip Wells the treasurer the sum of $32.

Do	Do	do	5.00
May 30th	Do	do	$10.75
June 27th	Do	do	4.50
July 25th	Do	do	$5.00
September 8th	Do	do	$4.75
January 2d	Do	do	$8.50

DEC. 4TH, 1843.

Rec'd			$[2.75]*
Deposited in D. R.'s hands from above date			103.25
Jenaury 1th 1844	Do	do	$4.50
febeary 5th			$3.
April 1	Do	do	$7.94
May 6th	Do	do	$4.50
June	Do	do	$5.25
July 4	Do	do	$4.75
August 1	Do	do	$4
September 2	Do	do	$6

[* Words and figures enclosed in brackets erased in copy.]

219	Oct Ath Rec'd		$2.50
	November 4th Do	Do 200	$9.25
Paid the 11th 1844		225	$2.00
March 4th Rec'd $4.25		250	
August		450	
November 14th 4.50		300	
October 5th $3.00		794	
		450 4	
		525 5169	
		475	
		400	
		800	

220 *Bill.*

Filed April 16, 1889.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
ALLEN C. CLARK, ALBERT A. BROOKE, and APPLETON P. CLARK, WILLIAM H. GRIMSHAW. } In Equity. No. 11734.

To the supreme court of the District of Columbia, holding an equity court for said District:

The complainant, Horace S. Cummings, states as follows:

1. That complainant and defendant- are residents of the District of Columbia.

2. That Stephney Forrest, late of the District of Columbia, but now deceased, being seized during his lifetime of original lots nine (9), ten (10), eleven (11), twelve (12), thirteen (13), fourteen (14), fifteen (15), sixteen (16), seventeen (17), and eighteen (18) of square ten hundred and eighty-nine (1089) of the city of Washington, in the District of Columbia, did by his deed dated the 25th day of September, 1845, and duly recorded in Liber W. B. 121, folio 251, of the land records of the District of Columbia, convey the said described real estate to David Redden, Daniel Simms, and William Barton, "and their successors in office forever, for the sole use and benefit of the Union Beneficial Society of the City of Washington for a burial ground and for no other purpose whatever."

3. That the said Union Beneficial Society was at the time of said conveyance an unincorporated association of colored persons, some of whom were free and others slaves, existing in the District of Columbia, the said association being formed, as complainant is
221 informed and believes, for charitable purposes and for affording mutual aid and relief to its members, and that the conveyance of said real estate was made to the said trustees for the sole purpose of a burial ground for the deceased members of said association.

4. That for many years after the making of said conveyance the

said real estate was used as such burial ground, and a large number of bodies were there interred.

5. That all of the said trustees are long since deceased, leaving no successors in office; that the said association about six or seven years ago was so reduced in the number of its members that it disbanded and went out of existence, and the said real estate ceased to be used as a burial ground.

6. That on the — day of ——, —, the municipal authorities of the District of Columbia issued an order prohibiting the further use of said real estate as a burial ground, and that the same has been abandoned, and that all of the bodies interred therein have been exhumed and removed, and the said ground is now unused and vacant.

7. That by deed dated the 8th day of December, 1847, and recorded January 14th, 1848, in Liber W. B. 140, folio 261, of said land records, said trustees, Redden, Simms, and Barton, attempted to convey to James Lodge, James Gray, and John Haines (or Haimes), trustees of the "Navy Yard Sons of Union," another unincorporated association of free and slave colored persons, so much of said real estate as is contained within the following metes and bounds—that is to say: Beginning at the northwest corner of said square and running south 33 feet on a line with 16th street east, thence 177 feet due east; thence 33 feet north to the line of C street south, and with the line of C street south 177 feet to the place of beginning. Complainant, however, is advised, and so avers, that the said trustees, Redden, Simms, and Barton, were without power to make said conveyance, and that nothing passed thereby.

8. That the said Stephney Forrest departed this life on
222 the — day of ——, 1855, and that there are now surviving him the following persons who are his sole heirs-at-law—that is to say, 1st, Mary Robinson, Rebecca Shorter, and Elizabeth Simms, who are the children of Elizabeth Wells, deceased and intestate, who was intermarried with Philip Wells; said Elizabeth Wells was the oldest daughter of said Stephney Forrest; 2nd, Thomas Henson, Elizabeth Henson, and Hobron Henson, children of Nancy Henson (afterwards French), deceased and intestate, who was the daughter of said Stephney Forrest; 3rd, Martha M. Lee (widow), daughter of Henrietta Ross, deceased, who was a daughter of said Stephney; 4th, Sophie Taylor (widow), a daughter of said Stephney; 5th, Stephney Forrest (unmarried), a resident of New Bedford and a son of said Stephney Forrest, deceased; 6th, Martha Hopkins (widow), a daughter of said Stephney Forrest, deceased. All of the aforementioned heirs are the descendants of said Stephney Forrest by his first wife, Rebecca Forrest. After the death of the said Rebecca the said Stephney married one Rachel, who is now living, and by her the said Stephney left surviving him and now living Mary J. Brooks (widow).

9. That by deeds dated September 9th, 1887, and duly recorded September 12th, 1887, in Liber 1276, folio 304, of said land records the said Mary J. Brooks, daughter, and Rachel Forrest, widow, of said Stephney Forrest, deceased, conveyed all their interest in said

real estate to William H. Grimshaw, who, by deed dated October 3rd, 1887, and recorded Oct. 5th, 1887, in Liber 1273, folio 307, of said land records, conveyed the said interests so acquired by him to Allen C. Clark, who with his wife, Sarah P. Clark, by deed dated the 3rd day of October, 1887, and duly recorded in Liber 1283, folio 154, of said land records, conveyed the same to Albert A. Brooke and Appleton P. Clark, Jr., in trust to secure said Grimshaw the sum of $5,500, as will more fully appear by reference to said deed.

10. That after the making of the deeds mentioned in the foregoing paragraph further deeds were executed to said Grimshaw as follows: 1st, a deed from John Haines, recorded in Liber 1312, at folio 182, of said land records, dated April 5th, 1888, and pur-
223 porting to convey that portion of said square 1089 as is described in the 7th paragraph of this bill; 2nd, a deed from Henry Simms, Mary E. Chew, Julia A. Washington, Cordelia Moton, Jeremiah Simms, Edgar W. Simms, and Zacariah Simms, dated June 4th, 1888, and recorded in Liber 1324, folio 242, of said land records, and purporting to convey the said lots 9 to 18, both inclusive, in said square 1089; 3rd, a deed from Arthur Wayne, Rosa Wayne, and Arthur Brooks, dated July 2nd, 1888, and recorded in Liber 1326, folio 341, of said land records, purporting to convey the said lots 9 to 18, both inclusive, of said square 1089.

11. Complainant is advised by counsel, and therefore avers, that the said deeds convey no estate in the property purporting to be conveyed and are clouds upon his title and should by decree of this court be so declared.

12. Reference is hereby made to the records of all of the deeds mentioned in all of the foregoing paragraphs of this bill, and leave is prayed to read the same or duly certified copies thereof on the hearing of this cause as often as occasion may require.

13. That all the heirs-at-law of said Stephney Forrest, deceased, have executed and delivered to complainant deeds of conveyance of the said lots 9 to 18, inclusive, as follows:

1st. A deed dated March 20th, 1889, from Mary Robinson, Rebecca Shorter, Elizabeth Simms, Phillip Wells, Thomas
Lib. 1629. Henson, and Lavinia Henson, his wife; Hobron Henson and Charlotte Henson, his wife; 2nd, a deed of same date from Martha Lee, Sophie Taylor, and Martha Hopkins; 3rd, a deed dated March 27th, 1889, from Stephney Forrest, son of Stephney Forrest, deceased. By virtue of said deeds complainant now holds, subject to the trusts mentioned therein, the entire and full beneficial interest and estate in and to said property, except the interest of the defendant Allen C. Clark, and that a complete title to the same will be held by him when this court has decreed the forfeiture and reverter which complainant is entitled to have declared by reason of the terms of the said original deed from
224 Stephney Forrest to said trustees.

Prayers.

The premises considered, complainant prays as follows:

1. That the defendants may severally be required to appear and answer the exigency of this bill.

2. That the said lots 9 to 18, both inclusive, of said square 1089 may be decreed to have been forfeited for non-user according to the conditions of the deed of conveyance by the original grantor, Stephney Forrest, and to have reverted to his heirs, who are the grantors of complainant and the defendant Allen C. Clark.

3. That a commission may also be appointed to partition the said lots between complainant and the said defendant, Allen C. Clark.

4. That the said deeds mentioned in the 10- paragraph of this bill be declared a cloud upon the title of complainant and of no effect to pass any title to said property, and that the same directed to be surrendered for cancellation.

5. That the complainant may have such further and other relief as the nature of the case may require and to the court may seem meet.

To which end complainant prays for process against the defendants.

The defendants are Allen C. Clark, Albert A. Brooke, Appleton P. Clark, and William H. Grimshaw.

FRANKLIN H. MACKEY,
Solicitor for Complainant.

225 *Answer of Allen C. Clark.*

Filed May 1, 1889.

In the Supreme Court of the District of Columbia.

H. S. CUMMINGS
vs.
ALLEN C. CLARK *et al.* } Equity 11734, Docket 29.

The separate answer of Allen C. Clark, one of the defendants, to the bill exhibited in the above-entitled cause.

This defendant, for answer to so much of said bill as he is advised it is material and necessary for him to answer on oath, says—

Paragraphs 1 and 2. That he admits allegations in paragraphs 1 and 2 to be correct.

Paragraph 3. This defendant does not know whether the members of the Union Beneficial Society were freemen or slaves. Other allegations of paragraph 3 admitted as true.

4. He admits statements in paragraph 4.

5. He neither admits nor denies paragraph 5, having no knowledge on the matters contained therein.

6. About thirteen years since the District of Columbia prohibited

further interment; recently all bodies have been exhumed and removed.

7. Whether the members of the "Navy Yard Sons of Union" were free or slave colored persons the defendant is not informed. The other allegations of the paragraph are admitted.

Paragraph 8. This defendant does not know who are the heirs-at-law of Stephney Forrest, but one Mary J. Brooks, describing herself as the sole heir-at-law of Stephney Forrest, conveyed to the defendant William H. Grimshaw, who conveyed to this defendant.

9. Admits averments in this paragraph and states that the indebtedness of $5,500 has been fully paid and a release executed by the trustees, Albert A. Brook and Appleton P. Clark, Jr., to
226 this defendant, who resold and reconveyed the property involved in this cause to William H. Grimshaw, said deeds all being duly recorded prior to the filing of the bill of complaint, to wit, April 9th and 10th, 1889.

10. Believes that statements in paragraph 10 are correct.

11. Question of law.

12. This defendant has no objection.

13. This defendant does not know that the grantors in the several deeds are the heirs-at-law of Stephney Forrest, and he neither admits nor denies that this defendant has parted with his title, as hereinbefore set forth.

And this defendant, having answered fully, prays to be hence dismissed with his costs.

ALLEN C. CLARK.

I do solemnly swear that I have read the answer by me subscribed and know the contents thereof, and that the facts therein stated upon my personal knowledge are true, and that the facts therein stated upon information and belief I believe to be true.

ALLEN C. CLARK.

Sworn and subscribed before me this first day of May, 1889.

[SEAL.] APPLETON P. CLARK,
Notary Public.

227 In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS
vs.
ALLEN C. CLARK *et al.* } No. 11734. Equity.

The clerk will enter the bill in this case dismissed.

FRANKLIN H. MACKEY,
Sol'r for Pl'ff.

Dismissal, as ordered, entered.

BY THE CLERK.

'89, 5, 24.

228 *Decree Dismissing Bill with Costs.*

Filed June 3, 1890.

In the Supreme Court of the District of Columbia.

HORACE S. CUMMINGS *et al.*
vs.
WILLIAM H. GRIMSHAW *et al.* } In Equity. No. 11824.

This cause came on at the present term to be heard upon the pleadings and proof and was argued by counsel. Upon consideration thereof, it is this 3rd day of June, 1890, adjudged, ordered, and decreed that the complainants' bill be, and it is hereby, dismissed, and that the complainants do pay the defendants their costs herein expended, for which execution may issue as at law.

A. B. HAGNER.

From the foregoing decree the complainants pray an appeal, which is allowed.

A. B. HAGNER.

MONDAY, *October* 26, 1891.

Session resumed pursuant to adjournment.
Present: Chief Justice Bingham and Justices Cox and James.

* * * * * * *

MARTHA HOPKINS *et al.*
vs.
WILLIAM GRIMSHAW *et al.* } 11824. Equity.

This cause coming on to be further considered by the court upon the record and proceedings submitted after argument by counsel of respective parties at a former day of this term, the court is of opinion that the bill and the matters thereof should be dis-
229 missed without prejudice to action at law; and thereupon it is hereby ordered, adjudged, and decreed accordingly, with costs.

MONDAY, *November* 16, 1891.

Session resumed pursuant to adjournment.
Present: Chief Justice Bingham and Justices Cox and James.

* * * * * * *

MARTHA HOPKINS *et al.*
vs.
WILLIAM GRIMSHAW *et al.* } 11824. Equity.

Rehearing of this cause is ordered to be had November 24, 1891.

MONDAY, *March* 7, 1892.

Session resumed pursuant to adjournment.
Present: Chief Justice Bingham and Justices Cox and James.

* * * * * * *

MARTHA HOPKINS *et al.*
vs.
WILLIAM GRIMSHAW *et al.* } 11824. Equity.

Opinion by Mr. Justice Cox directing that bill be dismissed without prejudice; decree to be submitted.

230 MONDAY, *January* 4, 1891.

Proceedings Before the Supreme Court of the District of Columbia, Sitting in General Term, Being the First Monday, January 4th 1892.

Present, presiding: Chief Justice Edward F. Bingham and Justices Walter S. Cox and Charles P. James.

* * * * * * *

MONDAY, *March* 21, 1892.

Session resumed pursuant to adjournment.
Present: Chief Justice Bingham and Justices Cox and James.

HOPKINS *et al.*
vs.
GRIMSHAW *et al.* } 11824. Equity.

This cause coming on to be heard upon an appeal from the decree of the equity court passed herein on the 3rd day of June, 1890, and being argued by counsel, it is this 21st day of March, 1892, ordered, adjudged, and decreed that the complainants' bill be, and the same is hereby, dismissed, and that they do pay to the defendants their costs in the equity court and upon this appeal, to be taxed by the clerk of this court, and that execution may issue therefor as at law, but this decree is without prejudice to the rights of the complainant to claim in any proper suit or proceeding such right, if any, as the said Stephney Forrest may have been entitled to in said real estate as a member of said Union Beneficial Society, and from this decree the complainants in open court pray an appeal to the Supreme Court of the United States, which is allowed.

(Signed) E. F. BINGHAM,
Chief Justice.

231 *Order Extending Time for Filing Record in Supreme Court U. S. and Fixing Amount of Appeal Bond.*

Filed April 13, 1892.

In the Supreme Court of the District of Columbia.

MARTHA HOPKINS *et al.*
vs.
WILLIAM GRIMSHAW. } In Equity. No. 11824.

An appeal to the Supreme Court of the United States having been taken in open court from the final decree of this court in general term passed herein on the 21st day of March, A. D. 1892, and good cause having been shown to this court why the record cannot be prepared and transmitted to said Supreme Court of the United States within thirty days from the date of said appeal, it is this 13th day of April, A. D. 1892, ordered that the time for filing said record in said Supreme Court be, and the same is hereby, enlarged to sixty days from the date of said appeal; and it is further ordered that the amount of the appeal bond to be given be, and the same is hereby, fixed at two hundred dollars.

By the court:

E. F. BINGHAM,
Chief Justice.

232 *Stipulation of Solicitors as to Record to Supreme Court United States.*

Filed May 5th, 1892.

In the Supreme Court of the District of Columbia.

MARTHA HOPKINS *et al.*
vs.
WILLIAM H. GRIMSHAW *et al.* } In Equity. No. 11824.

It is hereby stipulated and agreed by the parties hereto that the foregoing is a complete record of all the papers, exhibits, depositions, and other proceedings which are necessary to the hearing of the case in this court or in the Supreme Court of the United States to which this case is appealed, only such parts of Exhibit J. F. N. W. No. 2 being transcribed as is necessary for such hearing without the original exhibit, the right of either party to procure any order necessary to secure the production of said original on said hearing being hereby reserved. Exhibit W. H. G. No. 1 and the deed from Philip Wells to William H. Grimshaw, bearing date August 25, 1887, and acknowledged December 8, 1887, and marked "Exhibit W. H. G. No. 2," could not be found at the time of preparing this transcript; and it is agreed that should they or either of them be found before this case comes on for hearing in the Supreme Court

of the United States, a copy of the same may be certified by the clerk of this court as part of the record.

The right of either party to procure any order necessary to secure the production of the originals of said last-mentioned exhibits being hereby expressly reserved.

It is also stipulated that the deed from Stephney Forrest to H. S. Cummings, dated March 7, 1889, a copy of which is contained in the annexed transcript of the record of this cause, is in form the same as the other deeds of the complainants to said Cummings, which are referred to in the bill of complaint.

233 It is further agreed that Exhibit W. H. S. No. 1 may be produced and referred to on the hearing of this cause in the Supreme Court of the United States, they being photographs and impracticable of transcription in this record.

And any citation to appear in the Supreme Court of the United States and the provisions of rule 9 of the Supreme Court of the United States as to the time for filing this record in said court are hereby waived.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
For Appellants.
J. J. DARLINGTON,
W. L. COLE, *For Appellees.*

234 *Bond for Appeal to the Supreme Court United States.*

Filed May 14, 1892.

In the Supreme Court of the District of Columbia, the — Day of May, 1892.

MARTHA HOPKINS, MARTHA M. LEE, Stephney Forrest, Sophie Taylor, Thomas Henson, Elizabeth Henson, Hobron Henson, Mary Robinson, Rebecca Shorter, Elizabeth Simms, Philip Wells, and Horace S. Cummings, Trustee, Complainants, *vs.* WILLIAM H. GRIMSHAW and MARY J. BROOKS, Defendants.	In Equity. No. 11824, Docket 29.

Know all men by these presents that we, Horace S. Cummings and John S. Belt, his surety, are bound unto the above-named William H. Grimshaw in the sum of two hundred dollars ($200.00), to be paid to the said William H. Grimshaw, his executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this 14th day of May, 1892.

Whereas the above-named Martha Hopkins, Martha M. Lee, Stephney Forrest, Sophie Taylor, Thomas Henson, Elizabeth Henson, Hobron Henson, Mary Robinson, Rebecca Shorter, Elizabeth Simms, Philip Wells, and Horace S. Cummings hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is such that if the above-named Martha Hopkins, Martha M. Lee, Stephney Forrest,
Sophie Taylor, Thomas Henson, Elizabeth Henson, Hobron
235 Henson, Mary Robinson, Rebecca Shorter, Elizabeth Simms,
Philip Wells, and Horace S. Cummings shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HORACE S. CUMMINGS. [SEAL.]
JOHN S. BELT. [SEAL.]

Sealed and delivered in presence of—
FRANKLIN H. MACKEY.

Approved the 14 day of May, 1892.

E. F. BINGHAM,
Chief Justice S. C. D. C.

This bond satisfactory as to pecuniary sufficiency.
May 14, '92.

J. J. DARLINGTON,
Solicitor for Def't Grimshaw.

236 UNITED STATES OF AMERICA, } *ss:*
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court, under the stipulation filed May 5, 1892, in the cause wherein Martha Hopkins, Martha M. Lee, Stephney Forrest, Sophie Taylor, Thomas Henson, Elizabeth Henson, Hobron Henson, Mary Robinson, Rebecca Shorter, Elizabeth Simms, Philip Wells, and Horace S. Cummings, trustee, are complainants and William H. Grimshaw and Mary J. Brooks are the defendants, as the same remains upon the files and records of said court.

Seal Supreme Court of the District of Columbia.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 20th day of May, A. D. 1892.

J. R. YOUNG, *Clerk.*

Endorsed on cover: Case No. 15,045. District of Columbia supreme court. Term No., 121. Martha Hopkins, Martha M. Lee, Stephney Forrest, *et al.*, appellants, *vs.* William H. Grimshaw and Mary J. Brooks. Filed May 23rd, 1892.

165.

165-342.

FILED,
DEC 4 1895
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

MARTHA HOPKINS ET AL.,
APPELLANTS,

v.

WILLIAM H. GRIMSHAW,
APPELLEE.

~~191~~ 18.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLANTS.

H. O. CLAUGHTON,
FRANKLIN H. MACKEY,
Solicitors for Complainants.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1895.

Whereas the above-named Martha Hopkins, Martha M. Lee, Stephney Forrest, Sophie Taylor, Thomas Henson, Elizabeth Henson, Hobron Henson, Mary Robinson, Rebecca Shorter, Elizabeth Simms, Philip Wells, and Horace S. Cummings hath prosecuted an appeal to the Supreme Court of the United States to reverse the decree rendered in the above suit by the said supreme court of the District of Columbia:

Now, therefore, the condition of this obligation is such that if the above-named Martha Hopkins, Martha M. Lee, Stephney Forrest, Sophie Taylor, Thomas Henson, Elizabeth Henson, Hobron
235 Henson, Mary Robinson, Rebecca Shorter, Elizabeth Simms, Philip Wells, and Horace S. Cummings shall prosecute their said appeal to effect and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

HORACE S. CUMMINGS. [SEAL.]
JOHN S. BELT. [SEAL.]

Sealed and delivered in presence of—
FRANKLIN H. MACKEY.

Approved the 14 day of May, 1892.

E. F. BINGHAM,
Chief Justice S. C. D. C.

This bond satisfactory as to pecuniary sufficiency.
May 14, '92.

J. J. DARLINGTON,
Solicitor for Def't Grimshaw.

236 UNITED STATES OF AMERICA, } ss.
District of Columbia, }

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court, under the stipulation filed May 5, 1892, in the cause wherein Martha Hopkins, Martha M. Lee, Stephney Forrest, Sophie Taylor, Thomas Henson, Elizabeth Henson, Hobron Henson, Mary Robinson, Rebecca Shorter, Elizabeth Simms, Philip Wells, and Horace S. Cummings, trustee, are complainants and William H. Grimshaw and Mary J. Brooks are the defendants, as the same remains upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said court, at the city of Washington, this 20th day of May, A. D. 1892.

Seal Supreme Court of the District of Columbia.

J. R. YOUNG, *Clerk.*

Endorsed on cover: Case No. 15,045. District of Columbia supreme court. Term No. 121. Martha Hopkins, Martha M. Lee, Stephney Forrest, *et al.*, appellants, *vs.* William H. Grimshaw and Mary J. Brooks. Filed May 23rd, 1892.

165
165-342

Office Supreme Court U. S.
FILED.
DEC 4 1895
JAMES H. McKENNEY,
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Supreme Court of the United States.

MARTHA HOPKINS ET AL.,
APPELLANTS,

v.

WILLIAM H. GRIMSHAW,
APPELLEE.

~~121~~ 18.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLANTS.

H. O. CLAUGHTON,
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WASHINGTON, D. C.:
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Supreme Court of the United States.

MARTHA HOPKINS ET AL.,
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v.

WILLIAM H. GRIMSHAW,
APPELLEE.

Appeal from the Supreme Court of the District of Columbia.

BRIEF FOR APPELLANTS.

STATEMENT OF THE CASE.

On the 25th of September, 1845, Stephney Forrest, the ancestor of the complainants, conveyed in trust ten lots of ground, comprising the north half of square 1089 of the city of Washington, to David Redden, Daniel Simms, and William Barton, "trustees," and their successors in office forever, *for the sole use and benefit of the Union Beneficial Society of the city of Washington, for a burial ground, and for no other purpose whatever.*" The Union Beneficial Society was an unincorporated association of free

and slave colored persons, having for its object the mutual aid and relief of its members in case of sickness, and their burial in case of death. The funds of the society were raised by monthly dues. The ground in question was used for many years as a burial ground, until, in course of time, the society so dwindled in numbers that it disbanded. The evidence shows that there were but three living persons, at the time of the institution of the suit, who had ever been members of the association, and that the trustees were all dead. In 1855 Stephney Forrest died, leaving surviving him his widow, Rachel (a second wife), and the complainants (except Cummings) as his heirs at law. Mary Brooks, a daughter by his second wife, is also an heir, but she and the widow have conveyed their interests to the defendant, Grimshaw.

The defendant, Grimshaw, claiming to have authority from the three surviving members of the society, to wit, Philip Wells, John F. Wilkinson, and Samuel Middleton, undertook, shortly before the filing of this bill, to exhume, and did exhume, the bodies from this burial ground. He also placed upon record various deeds purporting to be conveyances of the *locus in quo* to him by the heirs of the trustees Redden, Simms, and Barton, and proposed to sell the property and divide the proceeds between Wilkinson, Middleton, and himself as the grantees of Philip Wells, the other surviving member. The land is now vacant and unoccupied, and the bill was filed to remove these various conveyances from the heirs of the trustees as clouds upon the title of complainants, and for a partition of the land between the parties in interest, the complainants contending that there is either a reverter or a resulting trust to them by reason of the extinction of the society and the abandonment of the property as a graveyard. In our argument we shall first consider it in the aspect of a resulting trust.

Abstract of the Pleadings.

The bill which was filed May 24, 1889, sets forth that Stephney Forrest, late of the District of Columbia, died seized of ten certain lots of ground, comprising the north half of square 1089 in the city of Washington, D. C.; that by his deed, dated September 25, 1845, and duly recorded he conveyed the said land to David Redden, Daniel Simms, and William Barton, "and their successors in office forever, for the sole use and benefit of the Union Beneficial Society of the city of Washington for a burial ground and for no other purpose whatever."

That the said Union Beneficial Society at the time of the conveyance and ever since was an unincorporated association of colored persons, some of whom were free and others slaves; that said association was formed for charitable purposes and affording mutual aid and relief to its members, and that the conveyance of said real estate was made to the said trustees for the sole purpose of a burial ground for the deceased members of said association.

That for many years after the making of said conveyance the said real estate was used as such burial ground and a large number of bodies were there interred.

That all of the said trustees are long since deceased, leaving no successors in office; that the association, about six or seven years ago, was so reduced in the number of its members that it disbanded and went out of existence and the said real estate ceased to be used as a burial ground.

That on the day of 1885, the municipal authorities of the District of Columbia issued an order prohibiting the further use of said real estate as a burial ground, and that the same has been abandoned, and that

during the months of February and March last all of the bodies interred therein were exhumed and removed in accordance with said municipal order, and the said ground is now unused and vacant.

That by deed, dated the 8th of November, 1847, and duly recorded, the said trustees Redden, Simms, and Barton attempted to convey to James Lodge, James Gray, and John Haines, trustees of the "Navy Yard Sons of Union," another unincorporated association of free and slave colored persons, a portion of the northwest corner of said half square of ground, but that complainants are advised, and aver, that said trustees were without power to make said conveyance, and that nothing passed thereby.

That said Stephney Forrest died on the day of , 1855; that the complainants, except the trustee Cummings, are his heirs at law by said Stephney's first wife, Rebecca; that after the death of his first wife said Forrest married one Rachel, who is now living, and by her the said Stephney left surviving him and now living Mary J. Brooks.

That by deed of September 9, 1887, and duly recorded, said Mary J. Brooks and said Rachel conveyed their interests in said real estate to the defendant, William Grimshaw; that by deed dated October 5, 1887, said Grimshaw conveyed said interests, so acquired, to Allen C. Clark; that the said Clark, on the 9th of April, 1889, conveyed the said land back to Grimshaw, in whom is now vested the undivided interests of said Mary J. Brooks and said Rachel.

That further deeds were executed to said Grimshaw, during the year 1888, from various persons (presumably some of the heirs of the trustees heretofore named), purporting to convey to him their interest in said real estate, all of which deeds have been duly recorded.

That complainants are advised, and so aver, that said deeds convey no interests in the property purporting to be conveyed, and are clouds upon their title.

That the heirs at law of Stephney Forrest have, with the exception of the said Mary J. Brooks, conveyed to complainant Cummings, who now holds the entire legal title in trust for the other co-plaintiffs, except the interest of the defendant, William H. Grimshaw.

The bill then prays that the said lands may be decreed to have reverted to the heirs of Stephney Forrest by reason of the terms and provisions of the original conveyance of said Forrest and the order of the municipal authorities, and the carrying out of said order as set out in the bill; that a partition may be had of said land between the complainants and the defendant.

That the deeds to Grimshaw, averred in the bill to be clouds upon the title, be so declared; and for general relief.

The defendant, Grimshaw, answered, admitting that said Stephney Forrest was seized in his lifetime of the *locus in quo*, but says that he was not seized thereof in his own right, but as agent and trustee of the Union Beneficial Society. He admits the conveyance by Forrest to Redden, Simms, and Barton, but denies the effect or construction of said deed to be as complainants allege. He avers that the Union Beneficial Society was and still is an unincorporated association of free colored persons of the District of Columbia; that it was organized in November, 1841, and has ever since been maintained as a society to promote the advancement and welfare of its members, and to afford mutual aid, relief, and benefit to the members thereof while living, and to the widows and children of deceased members; that its capital and revenue were derived from entrance or admission fees, mostly dues, and

fines imposed on members for violations of its constitution and by-laws.

That in the year 1845 a considerable sum of money had accumulated in the hands of the treasurer of said association, with which it determined to purchase the land mentioned in the bill; that said association authorized said Forrest, who was a member thereof, to purchase said ground from the United States for the use and benefit of said association, and placed in his hands to be used in paying for said ground, and which he did use in paying therefor, the sum of one hundred and twenty-nine and $\frac{93}{100}$ dollars of the money and funds of said association; that thereupon said Forrest, as the agent and trustee of said association, purchased said ground, paying therefor with the funds of said association, and obtained a deed of it for himself from William Noland, commissioner, &c.; afterwards and in discharge of his trust aforesaid, said Forrest conveyed by the deed mentioned in the bill the said land to Redden, Simms, and Barton in trust for said association. He denies that there is any reverter of said lands to the heirs of Stephney Forrest. He admits that the trustees Redden, Simms, and Barton are dead, but claims that the title to said land descended to the heirs at law of the surviving trustee charged with the trust aforesaid.

He avers that the association has never been disbanded, but has always kept up its organization and still exists for all the uses and purposes for which it was created.

He admits the order of the municipal authorities prohibiting the further use of said land as a burial ground, and requiring the removal of the bodies therein buried, and avers that said association was compelled to and did procure other ground, and did exhume and reinter said bodies, and in order to pay the costs and expenses so incurred was compelled to and did borrow large sums of

money, relying upon the proceeds of sale of the ground in question to repay said association for its great outlay in that behalf.

He admits the execution of the deed by Redden, Simms, and Barton, trustees, to the trustees of the Navy Yard Sons of Union, an unincorporated society of free and slave colored persons, but denies that the first-named trustees had no power to make such deed.

He admits the conveyance to him by Mary J. Brooks and Rachel Forrest, and the conveyance to Allen Clark and the reconveyance by him as set forth in the bill.

He avers that John Haines was the survivor of the trustees of the Navy Yard Sons of Union, and that the heirs of said Haines have conveyed to him by the deeds set forth in the bill; also that the heirs of Daniel Simms, whom he avers to have been the survivor of the trustees of the Union Beneficial Society, have by deed conveyed to him; that said deeds have vested in him (Grimshaw) a perfect legal title to all of said ground, and he says he procured said deeds at the instance and for the use and benefit of said Union Beneficial Society, and at its expense, and he now holds the same in trust for said association, and for no other use or purpose whatever; and he denies that said deeds are clouds upon the alleged title of the complainants, who have no right, title, or interest whatever in said ground; and he avers that Redden, Simms, and Barton took an absolute and indefeasible title in fee simple, and that said property was used by said association solely for the purpose of a burial ground as long as it was lawful so to use it, and said association only ceased such use of it when compelled to do so by law.

Issue was joined by the complainants, and testimony was taken establishing the facts as heretofore set forth; and thereupon, on the final hearing, the court passed a

decree dismissing the bill, which decree was afterwards affirmed by the general term, and from that decree this appeal has been taken. No opinion was filed by the court below, and consequently the record fails to show the reasons for the passage of said decree of dismissal.

Assignment of Error.

1. That the court erred in not declaring said deeds complained of in the bill to be clouds upon the title of complainants.

2. That the court erred in not declaring the complainants and the defendant tenants in common of said land, and decreeing a partition thereof according to their interests as heirs at law of Stephney Forrest or grantees of said heirs.

3. That the court erred in dismissing the bill.

Summary of the Material Evidence.

On the 18th of November, 1841, a number of colored persons, both free and slave, met together in the city of Washington and formed what they were pleased to denominate as the "Union Beneficial Society of the City of Washington, D. C." (Rec. 125). It was an unincorporated society, and its purpose, as set forth in its constitution, was to care for its sick members by paying each "the sum of $1.50 per week during his indisposition," and, in case of death, to contribute "towards defraying the funeral expenses." See Art. IX (Rec. 127).

The officers of the society were to consist of "a president, vice-president, secretary, and assistant secretary, five directors, and three stewards, to be elected annually by ballot." Art. I (Rec. 126).

To become a member of the society the applicant, by

the eighth article of the constitution, was required to pay an admission fee of fifty cents (Rec. 127). At least, that seems to have been the amount in 1841, when the society was organized. It was afterwards raised to fifteen dollars in the manner and under the circumstances hereinafter stated.

One of the articles of the constitution was as follows:

"Article XI.—Of the substantiality of this institution. Whilst six members of this institution unite for its continuance it shall not be broken." (Rec. 127.)

It does not appear who, or how many, were members of the society at its organization. It, however, had enough members in 1853 to elect its full complement of eleven officers. (Rec. 148.)

About four years after the organization of this society—that is to say, in the year 1845, Stephney Forrest, a well-to-do colored man (Rec. 14–15) conveyed for an expressed consideration of $129.93 (which his deed of purchase (Rec. 113) shows was the same price he had paid for it) ten lots of ground, constituting the north half of square 1089 of the city of Washington, to "David Redden, Daniel Simms, and William Barton, trustees for the Union Beneficial Society, * * * to have and to hold the said lots of ground and premises, with the appurtenances, unto the said David Redden, Daniel Simms, and William Barton, *and their successors* in office forever, *for the sole use and benefit of the Union Beneficial Society of the city of Washington, as aforesaid, for a burial ground, and for no other purpose whatever.*" (Rec. 114.)

After the making of this conveyance, the society seems for a number of years to have followed the usual course of such organizations. The graveyard, however, which evidently had been originally designed as a place of burial

for the members of the society, appears soon afterwards to have been opened to any of the colored population of the city who were willing to pay a burial fee of $4.50 for grown persons and $3 for children. (Rec. 150.)

In the course of time these burial fees came to be not only quite a source of revenue, but a means of perverting the society from its original objects. The minutes of the society which are copied in the record show that, beginning with the year 1853, or shortly before, the members had adopted the unauthorized practice of dividing the revenue derived from the sale of grave sites *equally among themselves*, so that at each quarterly meeting a sum of from five to thirty dollars was distributed to each of the members. This practice of dividing the burial fees had two very natural results:

First. It caused the members of the society to so change their by-laws as to prevent any further increase in the roll of members, and to bring about its certain and early extinction by raising the entrance fee from fifty cents to fifteen dollars (Rec. 149); for, of course, the less the number among whom the burial fees were divided the greater the amount received by each.

Secondly. It caused them to continue the sale of burial sites long after the graveyard had been completely filled with bodies, by the simple plan of *selling the old burial sites over and over again, and thus interring two, three, and four bodies in one grave!*

As evidencing the first of these results, a perusal of the minutes of the society will show that by 1867 the membership roll had decreased to seven members (Rec. 132). It was then increased in that and the following year to nine by the admission of Samuel Middleton and J. F. N. Wilkinson on the payment by them of fifteen dollars each (Rec. 132). *Only one more member* (Chew)

was admitted after this, and then the membership roll began to gradually decrease by deaths until, in 1876, the membership was reduced to five, viz., Philip Wells, Jno. F. N. Wilkinson, Samuel Middleton, Wm. Beckett, and Jas. Allen (Rec. 143). The following entries are taken from the minutes of that and subsequent dates:

"Feb'y 1, 1876. The se'y reported he had received twenty-six dollars since the last meeting of the society. * * * Resolved, that the twenty-six dollars be devided into five equal parts, being $5 each." (Rec. 142.)

"March 6, 1876. The Union Beneficial Association met on the above date. The sexton, Bro. Beckett, paid in eighteen dollars ($18.00), which was, on motion, devided into five equal parts, being $3.60 each, and the meeting then adjourned." (Rec. 142.)

"December 5, 1876. Forty dollars was devided into five equal parts, being $8.00 each." (Rec. 142.)

"July 11, 1876. Fifty-four dollars was devided into five equal parts between the members, being $10.90 each." (Rec. 143.)

"Sept. 5, 1876. $21.50 was in like manner divided into five parts." (Rec. 142.)

"Aug. 31, 1877. $60.00 into five parts of $12.00 each." (Rec. 144.)

"December 3, 1877. $100.00 into five parts of $20.00 each." (Rec. 144.)

"March 4, 1878. $62.50 into five parts, $12.50 each." (Rec. 144.)

"June 3, 1878. $105.50 into five parts, $21.00 each." (Rec. 144.)

"Sept. 2, 1872. $150.00 into five parts, $30.00 each." (Rec. 145.)

This little clique of five seemed to meet for no other purpose than to divide these proceeds from the sale of burial sites. Apparently they had discovered a means of revenue and were pushing it for all it was worth—to them-

selves. Thus, on p. 145 of the record, we find the following as recorded in the minutes of this so-called society:

"WASHINGTON, D. C., *Dec.* 22, 1878.

"The Union Beneficial Association met on the above date at the secretary's. Wm. Beckett reported that he had collected eighty dollars ($80.00), and paid in only $20.00, and said that he retained the sum of sixty dollars to pay for the *fences;* this action of Bro. Beckett *was not approved of.*

"The twenty dollars was then devided in four, being $5.00 each for Wells, Allen, Middleton, and Wilkinson. Adjourned.

"JNO. F. WILKINSON,
"*Secretary.*"

(Rec. 145.)

Beckett, for his conduct in thus squandering money for what seemed to them so superfluous a thing as a fence for the graveyard, appears to have been punished by not being allowed to participate in the next "devide" of $52, March 7, 1879, Allen, Wells, Middleton, and Wilkinson pocketing the whole of it—$13.00 each. (Rec. 145.)

Allen seems to have dropped out of the meetings after this date, probably from death, as he scarcely would have *resigned* from a society with such profitable perquisites. At all events, on June 14, 1879, another meeting was held and $74 was divided between Wells, Middleton, Wilkinson, and Beckett—$18.50 each. (Rec. 145.) September 5, 1879, $100 was divided among the same four—$25 each (Rec. 145). After one or two other divisions of this sort, Beckett seems to have discovered, as he thought, a still better thing than either Wells, Wilkinson, or Middleton. Being the sexton, whose duty it was to collect the burial fees, he concluded to *keep them all himself.* So we find that on March 21, 1882, Wells, Wilkinson, and Middleton,

calling themselves the "Union Beneficial Association," met "at the residence of the secretary." The account of the meeting of this trio of grave-sellers we will let Wilkinson himself tell in his own inimitable way, as it is found in the Record, at page 146 *et sequitur*, and reads as follows:

"WASHINGTON, D. C., *March* 21, 1882.

"At a quarterly meeting of the Union Beneficial Association, held at the residence of the secretary, No. 901 E street southwest, on the 21st day of March, 1882, at six o'clock P. M. Present was Philip Wells, Jno. F. N. Wilkinson, and Samuel H. Middleton, trustee. The president called the meeting to order, the roll was called by the secretary, who informed the president that a quorum was present.

"The secretary, Bro. Wilkinson, here said that he had notified the superintendent, William Beckett, by note to attend this meeting, but he made no reply thereto.

"Trustee S. H. Middleton was then detailed by the association to go after William Beckett (a distance less than a hundred feet), and request his attendance at the meeting.

"Trustee Middleton then retired from the meeting and returned again in about *ten minutes* and made the following report: 'Mr. President: In obedience to your order I repaired to the house of Mr. William Beckett, and requested his attendance at this meeting, but he emphatically declined to come, saying he *had no business* there.'

"The report of trustee Middleton was, on motion, ordered to be recorded as part of the proceedings of this meeting.

"The president here stated that Bro. Beckett, our fellow-member and superintendent, had given him last winter the sum of five dollars, and wanted me to conspire with him to exclude Brothers Middleton and Bro. Wilkinson, and deprive them of receiving benefits, but I would not agree with him, and he got mad with me and I have not seen or heard from him since, and he has been selling

the grave lots of the association and appropriated the monies received therefor to his own use, and thought that the association should take some steps to put a stop to it.

"The following preamble and resolutions was then unanimously adopted. Whereas, That William Beckett, the superintendent of the burial ground of the Union Beneficial Association, having violated the constitution, rules, and regulations of said association, in not making his quarterly returns to the secretary of all monies collected by him from the sale of grave lots in the grounds of the Union Beneficial Association, and having appropriated said monies collected by him to his private use, *Therefore be it resolved*, by the Union Beneficial Association in meeting assembled, That Bro. William Beckett be, and is hereby, removed from the office of sexton and superintendent of the burial grounds of the Union Beneficial Association (commonly known as Beckett cemetery), situate on C st. southeast, extending to the corner of 17th st. S.E., from this date, the 21st of March, 1882.

"*And be it further resolved*, That the office of sexton and superintendent of the Union Beneficial Association be, and is hereby, declared to be vacant.

"*And be it further resolved*, That William Beckett is here notified, warned, and forbidden to trespass upon the burial ground of the Union Beneficial Association, as exercising the office of sexton and superintendent, nor in any official capacity whatever, under the penalty of the law of trespass.

"*And be it further resolved*, That William Beckett, his agents and sons Daniel Beckett and Ida Beckett, and all other persons employed by the said William Beckett as grave diggers, are here notified, warned, and forbidden to trespass upon the burial grounds of the Union Beneficial Association, under penalty of the law of trespass.

"*And be it further resolved*, That the officer of the board of health of the D. C. be notified by the secretary that William Beckett have been removed from the office of sexton and superintendent of the burial grounds of the Union Beneficial Association (improperly known as Beckett's cemetery, in the square bounded by C and D sts. and

16th and 17th streets southeast, in the city of Washington, D. C.), for malfeasance in office, and that the board of health, or the officer in charge of said duty, be requested to refuse all applications for permits to bury in said burial grounds from William Beckett, his sons Daniel and Ida, his agents, nor any undertaker, or any person whomsoever unless they produce the written permission of the president, Philip Wells, and the secretary, Jno. F. N. Wilkinson, of the said association. *And be it further resolved*, That the secretary notify William Beckett, and all other parties concerned, of the action of this meeting. On motion the association then adjourned.

"JNO. F. N. WILKINSON,
"*Secretary.*

"PHILIP WELLS,
"*President.*"

Thereafter the membership roll of "The Union Beneficial Society" consisted of three names—Wells, Middleton, and Wilkinson. These enterprising individuals seemed to have lost sight of the constitution of the society, which, as we have seen, provided that so long as *six* members remained it should not be "broken."

The extent to which this "association" of three had worked their little bonanza for all it was worth will be found in the testimony of Mr. McGinn, assistant health officer of the District. He testifies (Rec. 110–111) that for the five years prior to 1883 there were 1,589 interments, and that from January, 1883, to November 13, 1883, when further interments were prohibited by the board of health, there were 560 bodies buried there, or over 50 a month! And all this in only a half square of ground, or about 45,000 square feet. If we allow an average space of 5 by 10 feet for each body—a small allowance, even without estimating for pathways,—this half square would have afforded burial space for about 900 bodies, and yet in five years and eight months 2,149 bodies were interred there,

to say nothing of the interments for the thirty-three years previous to January, 1878!

"Q. Now, Mr. McGinn, you may state whether you have been at the burying-ground while interments were going on or graves being dug for interments, and state what you saw done there in respect of the old graves.

"A. Well, I have been there on several occasions when graves were being dug. If you want me to state a particular instance, I will say that on November 12th, 1882, while in company with the health officers, I saw the remains of one coffin being taken from a grave where another one was to be put down.

"Q. Do you mean one body being buried over another?

"A. I mean one grave was being dug where one had been previously. They were removing the remains of an old coffin. On occasions afterwards I have seen evidence of two or three coffins being placed one upon another.

"Q. And in digging out these graves where there had been a coffin, they were throwing the remains of the coffin out on the ground?

"A. Yes, sir; to put another in.

"Q. What was done with that they took out—thrown on the ground?

"A. There was nothing there but the remains of the coffin. I could not say that I remember that there were any bones there. There were evidences of the ground having been formerly occupied for a grave.

"Q. What was the whole condition of the graveyard at that time in respect of the number of graves in the yard, whether it was completely filled or not?

"A. Well, it was just as we stated then; it had been filled over and over again with graves."

It was not to be expected that Wilkinson, Middleton, and Wells would voluntarily give up so lucrative a source of income. But on the 13th of November, 1883, they were compelled to do so by the public health authorities, as will appear by the following (Rec. 123):

"HEALTH DEPARTMENT,
"DISTRICT OF COLUMBIA, *September* 24, 1889.

"Extracts from the minutes of the late board of health of the District of Columbia, June 2, 1874.

"'Dr. Verdi, from the sanitary committee, submitted a report recommending that Ebenezer cemetery, Washington, D. C., be declared a nuisance injurious to health, and that the further interment of the dead therein be prohibited.

"'Report was accepted and the recommendations adopted.'"

"NOVEMBER 13, 1883.

"*To the Commissioners of the District of Columbia.*

"GENTLEMEN: The square of ground numbered 1089 and situated between 16th and 17th and C and D streets S.E., in this city (see plat herewith), has been used for a number of years as a burying-ground by a certain class of colored persons. It has been the opinion of this department for some time that the sanitary welfare of the community would soon demand a discontinuance of the interment of human remains at this point, and I think that time has arrived. By reference to the plat it will be seen that the space for interments is limited, and when it is known that within the past five years there have been 1,589 bodies buried in the north half of the square, some idea of how the earth is packed with remains may be obtained.

"I am informed that many interments have been made one upon another, and, upon personal inspection made yesterday, I saw the portions of one coffin being thrown up from a grave just preparing for another.

"I have decided that it is best to discontinue the issue of permits for interments in these grounds, which are known as the 'Union Beneficial' or Becket's grounds, and would ask the approval of the Commissioners to such action.

"Very respectfully,
"SMITH TOWNSHEND, M. D.,
"*Health Officer.*"

This sudden and unexpected action seems to have put for some time a quietus upon Wilkinson and Middleton; at least, we do not hear of them doing anything for several years. Having been stopped from burying others, they seem to have buried themselves from the world and its graveyard cares, to be resurrected at a later period by the defendant, Grimshaw, which gentleman it now becomes necessary to introduce. A colored man of more than the average shrewdness and intelligence of his race, but very much below its average in honesty and integrity. Grimshaw had married the daughter of Mary Brooks, who was a daughter of Stephney Forrest by his second wife, Rachel Forrest (Rec. 51). Philip Wells, the confrere, as we have seen, of Wilkinson and Middleton in this graveyard traffic, was a son of Stephney Forrest by his first wife. In this way, doubtless, Grimshaw and Wells had become acquainted with each other. It would appear from a letter of Grimshaw's, which is in evidence (Rec. 78), that about three and a half years after the issuing of the order of the District Commissioners which put so sudden a stop to any more of this disgraceful business it occurred to Wells that there was still something to be made out of his position of president of a society defunct to all the world but himself, so he sent for Grimshaw, and here is what the latter writes some time afterwards of the interview, in a letter which he addresses to Wells, and which explains itself (Rec. 78):

"WASHINGTON, *Dec.* 10, 1887.

"SIR: I find that your statement to me as to square 1089 is not true. In the month of July last you sent for me and told me that you was the only one that had the right to sell, and that the title was in you, and that you would sell to me for anything that I felt like giving, and that you made to [no] certain charge (I thinking that you

understood yourself and the title was with you. I then said to you, If the title is vested in you I will give you $200.00.) In order to stand by the bargain, I paid you $63.00 down. You then signed a quitclaim to me as president of a so-called Union Beneficial Society. On examination of the title, I found that you could not give me a title, because it was vested in others, whom I had to seek and buy from. I called several times at your house and told you that you had led me to believe that the title was in you and you had already received more than you oughter have, and [had] I done right I should not have paid you a cent until the title was examined. I have nothing more to say. I know that I have paid dearly for nothing. I would be glad if there was any way that I might get back my money that I already paid you and others.

"Truly,

"W. H. GRIMSHAW."

The so-called quitclaim which Wells executed on the occasion referred to by Grimshaw will be found on page 120 of the record. It will be seen, therefore, from the foregoing letter, which there is no reason to doubt correctly relates the transaction, that Wells had conceived the idea that, as president of a once existing society, he had the power to sell its burial ground *as if it were his own property*. Grimshaw, having no legal knowledge, doubtless thought the same until he was better informed by the title examiner to whom he went for a report upon the title. Burgdorf and Clark, two of the complainants' witnesses, testify as to Grimshaw's statements to them after he had been advised by the title examiner and had discovered how he had been misinformed by Wells.

Burgdorf says (Rec. 35–36) that some time in 1887,* his

* He omits to say what month, but as the deed to Clark, which was soon after executed in pursuance of this interview of Burgdorf with Grimshaw, is dated October 3, 1887, we may safely assume it was shortly

attention had been called to this square, No. 1089, as being offered for sale by Grimshaw, whereupon he says he had a conversation with him and that he asked $8,000 for it. "I asked about the title, and he (Grimshaw) said it was good, and that he had bought the heirs out and trustees."

"Q. Did he state who the heirs were?

"A. I think he told me—I am not positive—that it was a Mr. Forrest—Stephney Forrest. I think he said Stephney Forrest was the original owner and that he had deeded it to trustees, or something of that kind, for a burial ground, and when it ceased to be a burial ground *it would revert back to his heirs.*

* * * * * * *

"Q. Did he tell you who the heirs were?

"A. I may be mistaken, but I have a faint recollection it was his sister-in-law or his mother-in-law. I may be off on that, I don't remember distinctly, but to my best belief I think it was what he told me; his sister-in-law or mother-in-law.

"Q. Did he state whether he had obtained their titles to the property?

"A. Yes, sir; he told me he bought their title."

Burgdorf says he then suggested to Allan Clark the purchase of the property, and Clark testifies (Rec. 23) that when he and Burgdorf called on Grimshaw, he (Grimshaw) claimed *to own* the property, and furnished him with a certificate of a title examiner to that end; that he thereupon bought the whole square from him for $7,200, giving him a deed of trust for $5,500 and $1,700

before this date. It will be observed that Grimshaw says in his letter to Wells above given that Wells sent for him in July of that year, and the quitclaim of Wells is dated August 25, 1887, and his deed from Mary Brooks which was referred to by Grimshaw in this interview is dated September 9, 1887 (Rec. 3), so that it was after September 9 and before October 3 that the interview with Burgdorf occurred.

cash. He says that Grimshaw claimed that he had the Stephney Forrest title by a deed from his mother-in-law, Mrs. Brooks.

"Q. Did he tell you in what manner Martha [Mary] J. Brooks had the title to this property?

"A. *He claimed that she was the sole surviving heir of Stephney Forrest.*

"Q. Did he tell you how Stephney Forrest became owner of this property, if he said anything about it?

"A. He claimed that it was conveyed as a burial ground only, and when it ceased to be used it then reverted to Stephney Forrest and his heirs and Mrs. Brooks was the *sole heir* of Stephney Forrest.

"Q. He claimed under her?

"A. Yes, sir."

Clark then says that after he bought he made some examination of his own of the title deeds as set out in the abstract, and that in every instance he found the deeds described a *sole surviving heir*, which he says he considered "remarkable." As a result of his examination, he says he found that the title to the *south* half of the square was all right, but, not being satisfied with the title to the *north* half (the *locus in quo*), he required Grimshaw to rescind the sale as to that portion of the square, and to pay back the purchase money, which was done by a surrender of one of the purchase-money notes.

This testimony and the letter to Wells indicate clearly and conclusively the original relation of the defendant, Grimshaw, to the property in controversy. The Wells letter shows that in July, 1887, Grimshaw believed that Wells could convey him a title to the land. His subsequent interviews with Burgdorf and Clark show that he had in the meantime learned that he was mistaken as to this, and that it would revert to Stehpney Forrest's heirs

as soon as it ceased to be used as a burial ground; that he thereupon ignored Wells entirely, and pretending that Mary Brooks was the *sole surviving heir* of Stephney Forrest, procured a deed from her and then claimed to Burgdorf and Clark that the land had reverted to the heirs of Stephney Forrest by reason of the conditional clause in Forrest's deed to the Union Beneficial Society, and that he had purchased it from Forrest's sole surviving heir.*

Clark, however, refused to accept Mary Brooks as the *only* heir, and, as the other heirs would have nothing to do with ~~him~~, he concluded to change his position entirely and to recognize Wilkinson and Middleton, who were now setting up a claim of their own as "surviving members." It does not appear just about what time Wilkinson and Middleton took up with the idea that they, together with Wells, were the owners of this land. But it is very clear from the letter to Wells, and Grimshaw's own testimony, that the latter had negotiated with Wells to obtain title to this property before he (Grimshaw) entered into any arrangement with Wilkinson and Middleton or consented to recognize them as having any interest. Thus we quote from his testimony (Rec. 78):

"Q. * * * You think now that you had negotiated with Wells before you knew from Middleton and Wilkinson that they were members of the association, and that the title was not in Wells?

* It is true he stated to Clark that he had deeds from the heirs of the trustees, but it is plain that in this he was alluding to the *south* half of the square, which, as the record shows, was also a burial ground used by the "female branch" of the society, and which was conveyed to them by the deed of Isaac Wallace (Rec. 117). This south half Grimshaw was also working to obtain, and apparently did obtain some sort of title to it; but, as the south half of the square is not in controversy in this suit, it is unnecessary to further notice it.

"A. I think so; that is about it.

"Q. What effect had this information which you derived from Wilkinson and Middleton, after you got the deed from Wells, upon your actions in respect of Wells' quitclaim to you?

"A. It had simply no effect more than the papers secured me if he had any interest in that Union Beneficial Society.

"Q. Did you or not by letter or conversation complain to Wells that you had learned these facts and that he had deceived you?

"A. My letter to Wells represents the exact position that I had taken; that he had misrepresented the facts to me as to his *entire* ownership.

"Q. And this letter is the complaint that you made after you found out from Wilkinson and Middleton that they were members of the Beneficial Association, and that Wells could not give you title by his deed?

"A. *I think that is about it.*"

Finding, therefore, that Wells could not give him any title, and that his pretence that Mary Brooks was the sole heir of Forrest would not be accepted by any one, he was forced to enter into a "deal" with Wilkinson and Middleton, who thereupon appoint him as a *trustee* (?) to sell the burial ground. Wilkinson says he drew up a so-called resolution to that effect signed by himself and Middleton and Wells (Rec. 82). But it was really signed by nobody but himself, for on cross-examination he admits he signed Middleton's name to it and then sent it to Wells "through Grimshaw" (Rec. 71). Wells, it is admitted, could not write, for he made his mark to the deed to Grimshaw (in Ex. W. H. G., No. 2, Rec. 120), and yet Wells' name is *signed* to this so-called resolution. Wilkinson swears it was *not signed* when he sent it to Grimshaw, and the conclusion is inevitable that Grimshaw signed Wells' name to it, and so say the experts. (Rec. 108.) This is a fact as to Grimshaw's methods which it is well to make a note of.

Middleton and Wilkinson had a curious notion, conceding it to have been *bona fide*, in regard to their supposed rights in this half-square of ground. Middleton says (Rec. 85):

"He (Wilkinson) said it was necessary to have a trustee, and that Grimshaw had the other part of the ground, the female portion, on the south side of that same square. I think the square is ten hundred and something, and we claim to own the north half, which an alley divides. We claimed all that, and Mr. Wilkinson said it was necessary since he had got this women's ground or had it in possession and was made trustee, I think, too, and he was cleaning out that ground, and he thought it was all nonsense to leave it there and *do nothing with it, as it would be no benefit to us or to anybody else.* I told him to see Grimshaw, and to see whether we had better *clean it up* [viz., exhume the bodies] and to see what was best to be done, and to have him made a trustee.

"Q. Was he ever made a trustee?

"A. By our consent he was.

"Q. You mean by that he was made an agent for you?

"A. By our consent he was made trustee.

"Q. By you and Wilkinson?

"A. Yes, sir; the first time; then we visited Wells and he co-operated with us.

"Q. Was this done by you as officers, or merely as individual members of the association?

"A. *As owners.*

"Q. As owners?

"Mr. DARLINGTON: Objected to as calling for the opinion of the witness on a question of law.

"Mr. CLAUGHTON: Who were the owners?

"A. The site belonged to the surviving members.

"Q. Who were they?

"A. *Philip Wells, John F. N. Wilkinson, S. H. Middleton.*

"Q. Then your negotiations with Mr. Grimshaw were based upon the fact that the property belonged to you and Wilkinson and Wells?

"A. *On account of our being surviving members.*"

Wilkinson's testimony shows the same idea to have been held by him.

"Q. Did he (Grimshaw) ever offer to buy from you your interest in that property?

"A. No, sir.

"Q. Never made you any offer for it?

"A. Well, he never made an offer to me, but he made a joint offer.

"Q. To whom?

"A. That is, in the conversation with me he made a joint offer—that is, he wanted to know if Middleton and I would sell out to him.

"Q. Now, in that conversation in which that offer was made, did he mention Wells as a party from whom he was to get the title?

"A. No; not at that time.

"Q. Did he, at any time, mention Wells?

"A. After we had authorized him to act as a trustee for us, then he informed us that he had purchased Wells' interest." (Rec. 92.)

* * * * * * *

"Q. Was there any understanding as to what was to be done with the proceeds of any sale he should make?

"A. No, sir; no specific understanding as to that. It was very naturally to be supposed that when the ground was disposed of it would be equally divided.

"Q. Between whom?

"A. The members.

"Q. Who were they?

"A. Wells, Middleton, and Wilkinson.

"Q. Well, now, he had bought out Wells' share. Who would get Wells' share?

"A. Wells would get his share. Wells and he would have to fight out their own battle, so far as Middleton and I were concerned." (Rec. 96.)

This being the attitude of the defendant, Grimshaw, towards this property, the complainants, as heirs at law of Stephney Forrest, for the purpose of having their

interests represented by a trustee, conveyed to Horace S. Cummings, and thereupon the bill was filed as set forth in the record, and of which and the subsequent proceeding we have already given an abstract.

ARGUMENT.

I.

It will be seen from the answer of the defendant, Grimshaw, that the facts set up therein are totally at variance with the proof.

The proof is that the said association was disbanded and that there were, at the time of the filing of the bill, but three of the members of the society living; whereas the answer avers that the association "still exists for all the uses and purposes for which it was created."

II.

What is the effect of the deed from Stephney Forrest to the trustees Redden, Simms, and Barton? Did the society take any beneficial interest under the deed? It is not a case for *cypres* administration, because it is not a charity. If the beneficiaries named in the deed take anything under it, they take it as a society and not as individuals. Could they, being unincorporated, take as a society? This question has been determined by this court on a number of occasions. And it has been invariably held that an unincorporated association is incapable of taking by gift or grant.

Town of Pawlet *v.* Clark, 9 Cranch, 292, decided in 1815.

Vidall *v.* Girard, 2 Howard, 127, decided in 1824.

Ingles *v.* Trustees of Snug Harbor, 3 Pet. 144, decided 1830.

Ould *v.* Washington Hospital, 95 U. S. 303, decided 1877.

Angel *v.* Ames Corporation, sec. 184.

And to the same effect are the State cases, all holding that a grant to trustees for a mere voluntary association is void.

Hornbeck *v.* Westbrook, 9 Johnson, 73.

Jackson *v.* Cory, 8 Johnson, 385.

Sloan *v.* McConaley, 4 Ohio, 157.

German Association *v.* Scholler, 10 Minn. 331.

Thomas *v.* Marshfield, 10 Pick. 364.

Sanderson *v.* White, 18 Pick. 328.

In the case at bar the grant was *in præsenti* to trustees to hold in trust for a body incapable of taking at the time of the grant; it was not, as in Ould *v.* Washington Hospital (95 U. S. 303), a devise *in futuro* to an artificial being to be created and enabled to take. The court in that case makes the distinction and refers to the authorities.

In the celebrated Girard will case (2 Howard, 127) this court said:

"The donees were an unincorporated association which had no legal capacity to take and hold the donation in succession for the purposes of the trust."

In Baptist Association *v.* Hart's executors (4 Wheat. 27) the testator had bequeathed a fund to the "Baptist Association" at Philadelphia for the education of youths. This court held—

"That the association, not being incorporated at the testator's decease, could not take this as a society."

"That the bequest could not be taken by the individuals who composed the association at the death of the testator."

In Ingles *v.* Trustees of Snug Harbor (3 Pet. 144), testator devised the residue of his estate to trustees to erect a hospital to be called "Sailors' Snug Harbor," for the purpose of maintaining aged and decrepit sailors, and directed the trustees to apply to the legislature for an act of incorporation, which was done, and an act of incorporation was passed. The court held that the devise was good. Mr. Justice Thompson, delivering the opinion of the court, reviewed the decision in Baptist Association *v.* Hart, and said, speaking of the Baptist Association:

"This association, not being incorporated, was considered incapable of taking the trust of a society; it was a devise *in præsenti* to take effect immediately on the death of the testator, and the individuals composing it were numerous and uncertain, and there was no executory bequest over to the association if it should become incorporated. The court therefore considered the bequest gone for uncertainty as to the devisees, and the property vested in the next of kin, or was disposed of by some other provision in the will. If the testator in that case had bequeathed the property to the Baptist Association on its becoming thereafter and within a reasonable time incorporated, could there be a doubt that the subsequent incorporation would have conferred on the association the capacity of taking and managing the fund?"

And, in the Girard will case, Mr. Justice Story makes the same distinction between Girard's devise and that to the Baptist Association. So that we have the authority of this court in a half dozen well-considered cases for saying that where, as in the case at bar, the gift, grant, or devise is *in præsenti* with no direction for a future incor-

poration, it is void, and the title, whether it be legal or equitable, goes to the heir or next of kin, as the case may be.

III.

Again, even if the Union Beneficial Society had been a corporate body capable of taking, and the deed of Stephney Forrest to the trustees had been sufficient to pass the equitable fee to it, nevertheless, as all but three of its members are dead, and the society admitted to be disbanded and extinct, such equitable fee reverts to the heirs of the original grantor.

It is well settled that corporations, though limited in their duration, may purchase and hold a fee, and that they may sell such real estate whenever they find it no longer necessary or convenient. Kent says, "corporations may have a fee simple for the purpose of alienation, but they have only a determinable fee for the purpose of enjoyment; on the dissolution of the corporation the reversion is to the original grantor or his heirs; but the grantor will be excluded by the alienation in fee, and in that way the corporation may defeat the formality of a reverter." (2 Kent, 282; 5 Denio, 389; 1 Cows. 129; Nichols *v.* N. Y. & E. R.R., 12 N. Y. Rep. 129, 134.)

Angel and Ames on Corporations, sec. 779, recognizes the common law on this subject, but says it is obsolete even in England, except as to *eleemosynary and non-monied corporations*, which is exactly the sort of corporation the Union Beneficial Society would have been had it been incorporated; and see sec. 778 of the same work. To same effect are Field, Corporations, sec. 491, and Dillon, Corp., sec. 113.

IV.

But there is still another aspect of this case which may be considered. Suppose we should regard Wells, Wilkinson, and Middleton as the Union Beneficial Association, as they claim to be, notwithstanding the fact that its constitution distinctly provides for its extinction when it has no more than *six* members; nevertheless, since there is no pretence that the *locus in quo* is being now used as a burial ground, it follows that there has been a complete cessation of the use for which the land was granted, and, under such circumstances, the defendant, Grimshaw, to whom the heirs of the deceased trustees have conveyed, holds the legal title by way of a resulting trust for the heirs of Stephney Forrest. If the deed of Stephney Forrest, instead of conveying to trustees, had been a conveyance directly to the Union Beneficial Association, the language of the grant would make it a conditional limitation—that is to say, a base fee, determinable upon cessation of the use of the property for the purpose for which it was conveyed. The moment the use for which the property was conveyed ceases *the title vests in the grantor or his heirs without entry*, as would be necessary in the case of an estate upon condition.

"Where an estate is conveyed in fee for a specified purpose, 'and no other,' the fee or base fee determines upon cessation of the use of the property for that purpose * * * of course, upon the determination of a base fee the property reverts to the grantor (2 Blackst. Comm., pp. 100–110) without any claim or act upon his part, *where it is determinable by limitation*. In the meanwhile the estate is out of him, and all that remains to him is the mere possibility of a reverter (4 Kent. Comm., p. 10). Yet this mere possibility *is capable of transmission to his*

grantees, and will pass to them under a conveyance of the reversion."

Slegel *v.* Lauer, 148 Pa. St. 236, 243.
Kirk *v.* King, 3 Barr (Pa.), 436.
Scheetz *v.* Fitzwater, 5 Barr (Pa.), 126.
Vail *v.* Long Island, 106 N. Y. 283.

In all of the cases above cited the grants were upon a valuable consideration for certain purposes, and "no other."

In the case of Slegel *v.* Lauer (148 Pa. St. 245), just above cited, the facts were that in 1772 the plaintiff's ancestor conveyed, for *a consideration of seventeen pounds current money*, a strip of land to R. B. and L., "commissioners of Berks county, and their successors in said office, to and for the use, intent, and purposes following—that is to say, to be and remain forever hereafter unbuilt on, in order to prevent any prisoner or prisoners making their escape over the said prison wall by reason or means of any building to be erected contiguous to the same wall." In 1849 the county jail was removed more than a mile from the old location. The question before the court was whether, on the cessation of the use of the land for the purpose of a jail, it reverted to the grantor's heirs, and it was held that it did. Considering the construction to be placed upon the deed, the court uses this language:

"'The construction of a deed, as to its operation and effect,' says Kent of this very matter, 'will, after all, depend less upon artificial rules than upon the application of good sense and sound equity to the object and spirit of the contract in the given case.' (4 Kent Comm. 132.) What is needed is that the deed on its face contain a reservation or declare a *specific purpose* for which the land was conveyed *and from which the reservation* may be implied. Of course the mere expression of a purpose will not of and by itself debase a fee. Thus a grant in fee simple to

county commissioners of land 'for the use of the inhabitants of Delaware county to accommodate the public service of the county' (Kerlin *v.* Campbell, 15 Pa. 500) was held not to create a base fee." [And then, after giving a number of other instances, the court goes on to show that the question always to be considered is, whether the purpose expressed in the deed is the *only* purpose intended by the grantor, and says of the case before it:] "It (the land conveyed) was simply to serve the one declared object—the hindrance of the escape of prisoners, which the erection of walls contiguous to those of the prison would facilitate. *In view of all the circumstances, there seems to arise from the express declaration of purpose a necessary implication of the exclusion of every other.* It is a rule, in the construction of a statute, pleading, contract, will, and other instrument, that what is clearly implied is as much a part of it as what is expressed. (U. S. Babbit, 1 Black, 61; Hanchett *v.* Weber, 17 Ill. App. 114.) The instrument under consideration is therefore to be treated precisely as if it contained a declaration that the grant was for the purpose mentioned *and no other.* But where an estate is conveyed in fee for a specified purpose 'and no other,' the fee is a base fee determinable upon cessation of the use of the property for that purpose." Citing Kirk *v.* King, 3 Pa. 436; Scheetz *v.* Fitzwater, 5 Ind. 126.

Slegel *v.* Lauer, 148 Pa., p. 243.

To the same effect see—

Adams *v.* Logan County, 11 Ill. 336.
Church *v.* Borland, 155 Mass. 171.
Church *v.* Manning, 72 Md. 116.
Easterbrook *v.* Tillinghast, 5 Gray, 17.
Campbell *v.* City of Kansas, 102 Mo. 326.
Board of Education *v.* Edson, 18 Ohio, 226.
Gebhardt *v.* Reeves, 75 Ill. 301.

The fact that Forrest interposed trustees to hold the legal title can only have the effect of imposing upon the court the duty of following the law in dealing with the

equitable title, just as the courts of law would have dealt with the legal title.

But the position of the defence seems to be that, as the deed of Forrest passed a fee to the trustees Redden, Simms, and Barton, the estate passed on their deaths to the survivor and his heirs, and that the deed of these heirs passed a fee simple to the defendant, Grimshaw, who, although those deeds express no trust upon their face, declares he holds the land in trust for the "surviving members," and that his purpose is to sell and divide the proceeds among these survivors and their *assigns*, he being the "assigns." And it is claimed in support of this position that Forrest's deed declared a trust for the Union Beneficial Association, and that, as the deed shows that a valuable consideration was paid to Forrest for the land, there can be no resulting trust. This position is untenable both on principle and authority.

If it be the law—and this court, as we have shown, has said it is—that a merely voluntary association, *i. e.*, unincorporated society, cannot be the beneficiaries of a trust, and neither can the individual members (Baptist Association *v.* Hart, *supra*), then it follows that if they cannot be the beneficiaries of an express trust they cannot be of a resulting trust, for if they could the phenomenon would be presented of one having the capacity to hold by operation of law that which he is without capacity to hold by deed or devise.

But it is not true that a trust will not result where there is a valuable consideration for the grant.

Fonblanque, in his treatise upon Equity, states the proposition as broadly as language can put it :-

"*Although the feoffment be made for a consideration, it is the intent that guides the use, and the feoffor expressly declaring a particular estate of the use, it shows that if he*

intended to part with the residue he would have declared that intention also."

2 Fonb., ch. 5, sec. 4, note (m).

"*Though the whole of the estate be conveyed, if it be for particular purposes, or on particular trusts, which by accident or otherwise cannot take effect, a trust will result.*"

Id., ch. 5, sec. 1, note (a).

Citing: Shortridge *v.* Lampleigh, 7 Mo. 71.

Judge Story, in his Equity Jurisprudence, asserts the same doctrine:

"*In such a case the residue will result to the use of the feoffor or grantor, even though the feoffment or conveyance be made for a consideration.*"

2 Story Eq., sec. 1199.

"*The same principle applies to cases where the whole of the estate is conveyed or devised, but for particular objects and purposes or on particular trusts. In all of these cases, if these objects or purposes or trusts by accident or otherwise fail and do not take effect, or if they are all accomplished and do not exhaust the whole property, then a resulting trust will arise for the benefit of the grantor or devisor and his heirs.*"

Id., sec. 1200.

The reported cases sustain this proposition. See especially—

Reed *v.* Stauffer, 56 Md. 236.

Church *v.* Borland, 155 Mass. 171.

Slegel *v.* Lauer, 148 Pa. St. 26, and cases cited.

Reed *v.* Stauffer, *supra*, is "on all fours" with the case at bar. The facts briefly stated are as follows:

On the 17th of November, 1808, a lot of ground in the city of Baltimore was conveyed by deed by one Howard,

for a consideration of £100, to trustees, in trust *and to and for no other use, intent, or purpose whatever*, that it should "at all times thereafter be used as a burial ground or place of deposit for the remains of the members of the Society of German Baptists, commonly called Dunkers, and such other persons as a majority of the trustees residing," &c., "might think proper to give permission to be buried therein." In 1875 a bill in equity was filed by the heirs of the trustees for the sale of the lot on the ground that it had become unsuitable for burial purposes, and that it was necessary and would be for the interest and advantage of all the parties interested therein that it be sold. The court said (p. 253):

"In no event have the trustees named in the deed of 1808, their heirs and assigns, or the 'trustees of the Church of the German Baptist Brethren' or their successors, any right to have the lot in question sold and the proceeds of such sale distributed among themselves or their *cestui que trust*. The deed of 1808 in express terms declares the intention of the grantor, in creating the estate, to part with the use of the property conveyed for the particular purposes set forth in the deed, *and for no other purpose*, and the grantees, by their acceptance of that deed, are bound by that intention. The intention of the parties to a deed is to be carried into effect and accomplished, unless other expressions in the deed positively forbid it; or unless that intention violates some established principle of law. By the express terms of the deed, it was the intention of the parties to it to dedicate the lot conveyed to the uses therein specially declared; and neither they, their heirs, the *cestui que trust*, nor the lot-holders have any right to divert it from those uses. *The fact that a valuable consideration was paid for the grant can make no difference.* The estate conveyed and granted in express and exclusive terms, cannot be enlarged by the amount of the consideration paid. Where uses are declared they are to be held as correspondent to the con-

sideration. *Fonblanque's Equity Book* 11, *sec.* 4, *note m*, and the authorities there cited. * * * *It is manifest that neither the original trustees named in the deed of* 1808, *nor their heirs, nor the lot-holders, have any right to have the lot sold, and the proceeds of the sale distributed among them, or any of them.* It must be held and used in strict conformity to the terms of the deed by which it was conveyed, and for the uses therein specially declared. Should it be diverted from those uses, the terms of the deed, under which alone it is now held, would be violated, and the heirs of General Howard *would immediately become reinvested with the title to the lot.*"

In Church *v.* Manning (72 Md., at p. 128), the court, reviewing this case from which we have just quoted, said "the deed conveyed only *a conditional or determinable fee.*"

A case fully in line with the foregoing is First Universalist Church *v.* Boland (155 Mass. 171), above cited. In that case one Clark, in 1854, *for an expressed consideration of* $900, conveyed by deed certain land to the First Universalist Society and their assigns "so long as said real estate shall by said society or its assigns be devoted to the uses, interests, and support of those doctrines of the Christian religion embraced in the confession, &c., and when said real estate shall by said society or its assigns be diverted from the uses, intents, and purposes aforesaid to any other intent, uses, or purposes than as aforesaid, then the title of said society or its assigns in the same shall forever cease, and be forever vested in the following-named persons"—then follows a list of persons, giving them such an undivided interest. *Held*, that the limitation over was void for remoteness. The court, by Allen, J., said:

"Where there is an invalid limitation over, the genera rule is that the preceding estate is to stand unaffected by

the void limitation. The estate becomes vested in the first taker, according to the terms upon which it was granted or devised. * * * The grant to the plaintiff was to have and to hold, &c. These words do not grant an absolute fee, nor an estate on condition, but an estate *which is to continue till the happening of a certain event, and then to cease.* That event may happen at any time, or it may never happen. Because the estate may last forever, it is a fee. Because it may end on the happening of the event, it is what is usually called a determinable or qualified fee. The grant was not upon a condition subsequent, and no entry would be necessary; but by the terms of the grant the estate was to continue so long as the real estate should be devoted to the specified uses, and when it should no longer be so devoted, then the estate would cease and determine *by its own limitations.* * * * Since the estate of the plaintiff may determine, and since there is no valid limitations over, it follows that there is a possibility of reverter in the original grantor, Clark."

All the cases, it will be seen, hold that whether the qualification that the property shall be used for certain purposes determines the estate *ipso facto* when it ceases to be so used depends upon the intent of the grantor as contained within the four corners of the instrument. It is simply a question of construction. If the intention is clear that the grant is limited to certain uses or purposes, the intent must prevail, for, as Littleton says, "the intent guides the use." The cases differ only as to what establishes the intent. If the terms of the grant are that the property is to be used for certain purposes, without adding the words "and for no other purpose," or their equivalent, some authorities hold that such language does not necessarily mean that the grantor intended that it should be used for those purposes and no other; whether such language means to express that intent must depend upon whether such intent can be gathered from the instrument

itself. See Rawson *v.* Uxbridge, 7 Allen (Mass.), 125, and cases cited.

Such was the case, as we have seen, in Slegel *v.* Lauer, *supra*, where the court said, "the instrument under consideration is to be treated precisely *as if it contained* a declaration that the grant was for the purpose mentioned *and no other*." But no authority that we have been able to find holds that when the intent is clearly expressed it shall not be carried out; and they all agree that when, as in Forrest's deed, it is expressly declared not only that it shall be used for certain purposes, but for "no other purpose whatever," the intent is clearly expressed. It was upon this distinction that Board of Comm'rs *v.* Young (59 Fed. Rep'r, 96) was decided. That was a grant in fee of land for a burial ground, but the deed did not expressly limit its use to such purpose, and the court held that there was nothing in the deed which showed an intent of the grantor to limit the use to such purpose only.

One of the defences set up by the defendant is that the society was prevented by law—*i. e.*, the order of the District authorities—from burying other bodies in the *locus in quo*, and therefore they are not to be held to have committed any breach of the alleged condition of the deed to the trustees. This defence misconceives entirely the effect of the deed and the character of the estate limited to the trustees Reddin *et al.* We have shown that it was not an estate upon condition, but a conditional limitation, the distinction between which is well marked. In an estate upon condition, the estate is said to be *forfeited* to the grantor or his heirs upon the breach of the condition, and that none but the grantor and those in privity of blood with him can take advantage of the forfeiture, which is done by entry or some equivalent act. This right of entry cannot be conveyed, and the estate, therefore, remains in the grantee

until such entry has been made. On the other hand, as we have seen, where the estate is limited to a certain use, *and no other*, the moment the use for which the property was conveyed ceases, the estate ceases and the reversionary estate vests in the grantor. If trustees are interposed to whom the fee simple is conveyed to hold in trust for certain uses or purposes, on the cessation of those uses the trust estate ceases, and the trustees hold for the grantor and his heirs or assigns.

Thus in Esterbrook *v.* Tillinghast, 5 Gray (Mass.), 17, a testator devised real estate in trust to apply the income to the maintenance of a pastor or elder in a church in the town where the testator resided, of a certain faith and practice, *so long* as the members of that church or their successors should maintain the visibility of a church in such faith and order. Afterwards the only two members, at a meeting called by public notice, voted and resolved that they would no longer endeavor to maintain the appearance of a visible church. *Held*, that the church was thereby dissolved and ceased to be a visible church, and that the trustee held the estate *as a resulting trust*, for the testator's heirs at law. The court, by Metcalf, J., said:

"The devise to the defendant of the property in question was doubtless a devise in fee (Cleveland *v.* Hallett, 6 Cush. 407); and having been made to him as trustee and for a specific purpose only, he holds the property, since the failure of the trust *by the extinction of the cestui que trust*, not for his own benefit, but for the devisor's heirs at law, and is answerable to them for it. Hill on Trustees (2 Amer. ed.) 157, 184, 185."

See also Church *v.* Boland, 155 Mass. 171, heretofore cited.

The case of Board of Commissioners *v.* Young, *supra*, where, as we have just seen, the grant was for a burial ground,

but the deed did not limit its use solely to that purpose, the court held that where the use of the land as a burial ground had been prohibited *by law*, the failure to use it for such purpose was excused, but the case is quite different where the grant is for a certain use and "*no other use whatever;*" there the grantee is expressly prohibited by the grantor from using the land for any but a single purpose, and when the owner of property has expressly and clearly declared the only use to which the grantee shall put the land, and the grantee accepts the conveyance, not even the *law* shall say that the grantee may keep the land and use it for *another* purpose. It was the condition upon which the estate was conveyed and accepted.

But the learned counsel for the defence further misconceives the situation as disclosed by the evidence and the contention of the complainants, for even if it were the law that the grantee might excuse his use of the property for another purpose when the grantor has expressly declared that he is to use it for a certain purpose and "no other," on the plea that the *law* has prohibited him from using it for the only purpose for which it was conveyed and accepted by him, still that is not the case at bar. Here the grantee—the Union Beneficial Society—which, as long as it was in existence, used the property for the only purpose for which it was conveyed, has become *extinct*, and other persons, never intended to be the beneficiaries of the trust, are undertaking to appropriate and use the land for other purposes. That is plainly not the case decided in 59 Federal Reporter.

It may be conceded that if the Union Beneficial Society could have taken as an unincorporated body, it should have had a reasonable time in which to put the property to the use limited by the deed. But suppose that within one or five years after the date of the deed the

society had ceased to exist under its constitution and by-laws, because of the fact that it was composed of fewer than six members, and that the bodies which had been buried in the ground in question had been exhumed and removed elsewhere, would it be contended that a trust would not have resulted? Should, then, the conditions which would have controlled the estate in the beginning be less potential when happening at any subsequent time?

V.

LIMITATIONS AND ADVERSE POSSESSION.

There are no such questions in this case. Neither the answer nor the testimony set up such a defence, for the very good reason that the defendant claims under the deed of the complainant's ancestor, and the society having entered into possession under that deed, they and those who claim under it can only hold according to the terms of the deed. Having entered by permission of Stephney Forrest, they cannot set up an adverse possession against him or those who claim under him without first surrendering the possession permissively obtained. Furthermore, the defendant, Grimshaw, is not such a successor to the Union Beneficial Society as entitles him to tack their possession to his, even if their possession had been an adverse one.

VI.

An attempt is made to show by the testimony of the second wife of Stephney Forrest, and his daughter born of her, that this land was bought and paid for by him with the society's own funds, and was, therefore, never the land of Stephney Forrest. The fact, it is said, that he took the title in his own name instead of the name of the

society gives his heirs no right to claim the land, since *he* could not have claimed it. And thereupon the attempt is made, after the lapse of nearly fifty years, when all the parties to the deed are dead, to prove by *one* witness only a resulting trust in favor of a society all the members of which, at the time of the execution of the deed, are also dead, and the society itself for years extinct. Under such circumstances, no court has ever declared a resulting trust on the ground that the party in whose name the title was taken paid for it with trust funds in his hands given him for the purpose of purchasing the property. The deed which the society accepted from Forrest itself rebuts the contention that it was purchased by him for the society, otherwise it would have demanded an absolute deed instead of a deed limiting its use of the property.

But the parol evidence offered to prove the fact upon which a trust would result is ridiculously insufficient. In the first place, the testimony of Rachel Forrest is clearly inadmissible, because a wife cannot testify as to communications made to her by her husband. See authorities collated in Am. and Eng. Encyl. of Law, vol. 19, p. 152. But if her testimony were admissible it falls far short of what would be required (Rec. 54).

The other witness is the daughter, who, of course, is the *only* witness whose testimony is receivable. She testifies that she was only *thirteen* or fourteen years old at the time of the transaction, and here is what she says about it (Rec. 50):

"Q. Do you know anything about the purchase by your father of the ground in which the Union Beneficial Society had their cemetery for some years?

"A. Yes, sir; my father bought it for the Union Beneficial Society.

"Q. How do you know that he did?

"A. I heard him say that he was going to buy it for the society, and he left home and went to the secretary and got the money.

"Q. Secretary of what?

"A. Of the Beneficial Society.

"Q. He told you he was going to buy the property for the society?

"A. Yes, sir.

"Q. That he was going to the secretary to get the money?

"A. Yes, sir.

"Q. Did you see him afterwards with the money?

"A. *No, sir;* I was at school when he came back.

"Q. You did not see that?

"A. No, sir; but my mother did.

"Q. You heard him say that he was going to the secretary of the society to get the money to buy it for the society?

"A. Yes, sir.

"Q. That is *all* you know about it?

"A. That is all I know of my own knowledge. He bought it for the society. I was thirteen or fourteen years old. I was going to school. He went away in the morning, and nine o'clock was of course the school hour."

This is the testimony, and the entire testimony, upon which it is sought to overcome the presumption of the deed. It is needless to say it is utterly insufficient. Parol evidence to establish a resulting trust of this sort has been said to be "one of the mistakes of equity" (Lee *v.* Browder, 51 Ala. 288), and it is always received with great caution. It must be "clear and distinct or explicit." "Clear and satisfactory." "Not only satisfactory, but clear and undoubted." "Unquestionable." "Clearly sufficient." "Full, clear, and convincing." "Most convincing and irrefragable." See authorities collated in Am. & Eng. Ency. of Law, vol. 19, p. 30:

"Loose evidence of conversations is insufficient."
Reid on Stat. of Frauds, § 974, citing Jones *v.* Lock, L. R., 1 Ch. App. 28.

"The verbal declarations or admissions of the grantee in whom the legal estate resides are admissible as evidence against him and all claiming under him otherwise than as *bona fide* purchasers for value. Evidence of this kind is admitted to be of the most unsatisfactory character, and is received with great caution. It is so easy of fabrication, so incapable of contradiction, and the total alteration of its effect which the slightest mistake or failure of recollection may cause, that, *after the death of the grantee*, it will not be made the basis of a decree establishing a resulting trust or an equity in opposition to the terms of a conveyance unless it is clear, consistent, and corroborated by circumstances." (Lehman *v.* Lewis, 62 Ala. 129. Am. & Eng. Ency. of Law, vol. 19, p. 30.)

In Mercer *v.* Stark (1 Sm. & Marsh, ch. 438) it was said that to enforce a specific trust on real estate from loose and equivocal expressions made by one of the parties in mere social conversation, would be inconsistent with the spirit and policy of the statute of frauds and with the general rules of evidence; and that *parol declarations* of a trust should be clear and unambiguous before the court can change the absolute nature of a conveyance and decree the execution of a trust not expressed in the deed. Citing Slocum *v.* Marshall, 2 Wash. C. C. 397.

In Smith *v.* McCann (24 Howard, 398) Chief Justice Taney, speaking for this court, said, in a case where the party claiming the resulting trust had accepted the benefit of a deed declaring express trusts, that such a party "can have no equity against the express trusts *to which he assented*, and which indeed, according to the plaintiff's allegation, he procured to be made. And when the deed is offered in evidence by the plaintiff in order to derive to

himself a legal title under it, the interests and estates thereby conveyed *cannot be enlarged* or diminished by testimony *dehors* the deed."

VII.

A singular position taken by the defence in the court below, and which it may probably take here, is that which grows out of this *alleged* fact that Stephney Forrest purchased this land with money placed in his hands by the Beneficial society for that purpose, but took the deed to himself instead of to the society, and it is argued that if the land is to revert at all it must revert to the members of the society who subscribed the purchase fund, and not to the person who violated his trust by taking the deed in his own name. That is to say, the heirs of a number of persons whose names are not known, nor in what proportion they contributed to a fund, are entitled to take the land because fifty years ago Stephney Forrest violated a trust which the subscribers to the fund, whoever they were, never complained of, but, on the contrary, accepted from their trustee a deed which on its face expressly negatives the claim now made. In Prevost *v.* Gratz (4 Wheat. 481) this court refused, upon much stronger evidence, to declare a trust of lands forty years after the death of the alleged trustee. But even if it were the law that such a resulting trust could, more than forty years after the death of the trustee, be enforced (and we have shown just above that the proposition is ridiculous), still how are the beneficiaries of such a resulting trust to be identified at this late day? And what aliquot part of the property are they to have? In Olcott *v.* Bynum (17 Wall. 44–59):

"Where the purchase money is all paid by one, and the property is conveyed to another, there is a resulting

trust in favor of the party paying, unless there be something which takes the case out of the operation of the general rule. But, where he furnishes only a *part* of the amount paid, no trust arises unless his part is some definite portion of the whole, *and is paid for some aliquot part of the property*, as a fourth, or a third, or a moiety. *There must be no uncertainty as to the portions of the property to which the trust extends.* Here the amount paid was $7,853.33, and it was paid without reference to any *specific part* of the property. Hence the principle in question [resulting trust] does not apply."

Forrest bought the property on the 9th of August, 1845, and sold it six weeks later to the society for the same price. If he had bought with the society's money, why should he take the deed in his own name and keep it there for six weeks before conveying? The inference is clear that he bought with his own money, and then determined to sell it to the society for what he gave for it, provided it was accepted on the terms of the trust, which it accordingly did. Yet because the deed to Forrest from his grantor expresses the same consideration that is named in the deed by him to the trustees the defence have ventured a *guess* as to the source of the consideration for the deed to Forrest, and then say because it *might* have been so, therefore it *must* be so. On the other hand, if Forrest was merely purchasing with the money of the society for the society, it is reasonable to suppose that the deed would have been made directly to the trustees; but, whether it was so or not, the society, by *accepting* the trust expressed in the deed, *assented* to it (Smith *v.* McCann, *supra*), and cannot now, even if it were in existence, be heard to contradict by parol proof the express terms of that trust.

The learned counsel for the defence cited just two cases in the court below in support of their contention that the

land has reverted, if it reverts at all, to the heirs of the original members of the society, whoever they were, because, as it is alleged, they paid the purchase money. Those two cases are Clark *v.* Chelsea Academy (56 Vt. 734), and Gibson *v.* Armstrong (7 B. Mon. 481). Neither of them support the contention. In the first-named case the deed, which was for a valuable consideration, *expressly* declared that the land was to be held in trust "*for the subscribers*" to the fund for building and furnishing an academy, &c., and the court held that the grantor could not draw in question the fact that the land was in part paid for by the subscribers, and consequently, *if* it reverted at all, which the court refused to decide, it reverted to their use in the ratio of their several contributions. The decision was clearly *obiter*, and contrary to the principle laid down by this court in Olcott *v.* Bynum, *supra*. But it is plain that, whether *obiter* or not, it furnishes no parallel to the case at bar.

In the second case land was conveyed to trustees for the use of the members of the Methodist Episcopal Church in the United States to build a church, &c., and the deed expressly provided that if, at any time after the building of the church, the trustees should become indebted on account thereof, they might mortgage or sell the land, and the surplus, after the payment of the debt, should be disposed of for the use of the society attending divine services on said premises. The court said:

"The last clause of the deed shows that upon a sale of the premises, though involving perhaps the total alienation from the use declared, the surplus is to be disposed of, *not for the purpose of reimbursing the donations made*, nor for the direct benefit of any individuals, but *for the use of the local society* belonging to or attending divine services on the premises. Whence it may be inferred that

so long as that local society remains and can be identified, the uses of the deed will not fail, but will still pertain to the society *unless forfeited* by its departure from the conditions of the deed."

What possible support such a case can give to the proposition of the learned counsel we are at a loss to understand.

In conclusion, we have to observe upon this point that for the court to hold that the land reverts or results to the heirs of the original members of the Union Beneficial Society on the sole testimony of a witness, who, at the time of the transaction, was a colored girl of thirteen years of age, would be carrying the doctrine of resulting trusts farther than any court has ever carried it before, and could scarcely be carried farther however much the statute of frauds is in the future to be overridden. The direct effect of such a decision in this case would seem to be to tie up forever *in nubibus* the title to a valuable property, for how is it to be known who the original members were? And who would purchase and improve a piece of property with the possibility hanging over him that at any time one of the heirs of a newly discovered member may set up his claim for a share of the property?

VIII.

There is an allegation in the bill to the effect that the deed from six of the heirs at law of Stephney Forrest vested the legal title in the complainant, Horace S. Cummings, and that the title will be complete when the court shall have decreed a reverter to the heirs at law of said Forrest.

This language is perhaps liable to the criticism of the learned counsel for the appellees. The allegations of the

bill are that the legal title passed to Redden, Simms, and Barton, and that they held that legal title in trust for the Union Beneficial Society according to the terms of the deed. The bill further avers certain facts, from which, as matter of law, a trust results to the heirs of Stephney Forrest upon two grounds:

1. Because the trust for the Union Beneficial Society could not take effect.

2. Because the trust was for a certain purpose, and no other purpose whatever, and the property has ceased to be used for that purpose.

These allegations clearly set up a resulting trust, and the erroneous description of the title vested in Cummings cannot affect the relief to which the facts of the case entitle the complainants.

IX.

The learned counsel argues that it is apparent upon the face of the bill that this is a case of disputed title, and consequently proceedings in partition are not appropriate for such contests; but this is a *non sequitur*. If the disputed title is an equitable title, where shall we go for a partition of the estate but to a court of equity? The complainants contend that they are co-tenants with the defendant, Grimshaw, of an equitable title, he having purchased the interest of one of the heirs (Mary Brooks) of Stephney Forrest.

The appellee Grimshaw, in his answer, sets up the legal title that was vested in the trustees Redden, Simms, and Barton by virtue of deeds from the heirs at law of the last survivor, but avers that he holds that legal title in trust for the surviving members of the Union Beneficial Society. On the other hand, the complainants claim

that he holds it for the heirs at law of Stephney Forrest. What court has jurisdiction of that dispute?

If the position taken by the complainants is correct, then, according to the view of the appellee, they must first file a bill in equity to have the resulting trust declared to be in them, and after that decree is obtained they must file another bill for partition.

Such is not the law as we have learned it. In White *v.* Tudor's Lead. Cases (vol. 2, pt. 1, p. 903) it is said, speaking of partition in equity:

"It will be seen, then, that where complainant's title is disputed on legal grounds which are sufficient to occasion a reasonable doubt, a chancellor will not take the determination of the question on himself, and will either dismiss the bill or retain it until the point has been determined by some appropriate tribunal. When, however, the defendant alleges an equitable title in himself or impeaches the plaintiff's right on *equitable* grounds, *the question is already before the appropriate forum*, and may be considered and resolved as a necessary, though *incidental*, step in the final determination of the cause."

The act of Congress of Aug. 15, 1876 (19 St. 202), giving jurisdiction in partition to the supreme court of the District, expressly declares that in that proceeding "the court may, in addition to the powers conferred by the act itself, exercise such powers as are or may be conferred by virtue of the general equity jurisdiction of the court." If this language means anything, it means that the equitable question of the right of the complainant to the property of which partition is sought may be determined in proceedings in partition.

Lucas *v.* King, 10 N. J. Eq. 277.

X.

It was contended below that if the complainants have a resulting trust it will vest in them a legal title by virtue of

the statute of uses, and our remedy is, therefore, ejectment on that legal title. But we submit that a resulting trust is not affected by the statute of uses. A resulting trust is an equity unknown to the law. Thus in Moore *v.* Spellman (5 Denio, 225), a leading authority on this question, the case was an action of ejectment. The defence set up was that the plaintiff's ancestor had purchased the land with the means of the defendant's ancestor, and that there was consequently a resulting trust to the defendant, which gave him the legal title. The court, however, held that the legal title was in the plaintiff, and that a court of law could not take notice of a resulting trust. The court said:

"There is no difference between resulting and other trusts; they are all but trusts; merely equitable interests, or, as defined by Cruise, vol. 1, Dig., 452, sec. 3, 'A right in equity to take the rents and profits of lands whereof the legal title is vested in some other person.' I speak of what were properly called trusts in 1826, when the deed to Sophia Spellman was executed, and not of trusts under the Revised Statutes. Nor do I refer to such uses or trusts, these words being originally perfectly synonymous (*id.*, sec. 2), as were executed by the statute of uses, for they thereby became legal estates. *The statute of uses, however, has no effect upon resulting trusts, which remain, as at common law, mere equitable interests*, and as such cognizable only in courts of equity. Numerous changes in the law of trusts have been made by the Revised Statutes, but they need not be stated, for none of them have any effect upon the case now in hand." And in support of its decision numerous authorities are cited.

So in Watkins *v.* Holman (16 Peters. 25), which was an action of ejectment, in which the like defence was set up, namely, that defendant had the *legal* title by reason of a resulting trust to him. The Supreme Court of the United States, McLean, J., delivering the opinion, says:

"It is not perceived why a *court of law* should regard a *resulting trust* more than other equitable rights; and any attempt to give effect to these rights at law, through the instrumentality of a jury, must lead to confusion and uncertainty. Equitable and legal jurisdictions have been wisely separated; and the soundest maxims of jurisprudence require each to be exercised in its appropriate sphere."

Suppose this court should hold that the complainants must proceed at law, by which is meant, of course, that we must bring ejectment. Well, the action is brought, and the cause is upon trial; the plaintiffs read the deed, vesting title in Stephey Forrest. What next? They claim under the deed from Stephney Forrest to the trustees, and this deed parts with the legal title and if read to the jury puts the plaintiffs out of court since this deed constitutes their only muniment of title. If they do not read it the defendant will. As there is no one in adverse possession (who the defendant to the action would be is an unanswerable question), and the same result follows. For if, when it is read, the plaintiffs reply that that deed gives them a resulting trust, the effectual rejoinder will be that courts of law cannot take notice of that sort of title.

It is plain from these authorities, first, that the legal title is necessary to support an action in ejectment; and, secondly, resulting trusts are not affected by the statute of uses. In other words, the statute of uses only executes a use and does not execute a trust by clothing it with the legal title. If this be the law, then the court having jurisdiction to adjudge the existence of the equity, viz., the resulting trust, must proceed to adjudicate all the other questions.

XI.

It is further contended that the prayer of the bill in terms sets up a reverter, which is technically a claim to a legal right. But may not a trust revert as well as the legal title? Besides, if the *facts* set forth in the bill entitle the complainants to a decree of a resulting trust in their favor, will the misnomer in the prayer defeat their relief? If the case made in the bill entitles them to relief under the prayer for general relief, the court will grant it though a different relief was prayed for, unless the relief to which they are entitled under the general prayer is wholly inconsistent with that which is specially prayed.

Jones *v.* Van Doren, 130 U. S. 684.

And this brings us now to a consideration of the case under the view that the *legal* title passed to the complainants on the cessation of the use.

XII.

We have argued so far on the theory that the deed of Forrest to the trustees Redden *et al.*, and their successors in office forever, passed to them, as contended by the defendant, the fee simple to the land on the not unreasonable theory that the grantor could not have intended the trustees to take only a life estate, when the purpose of the trust was not to end with the lives of the trustees. It is naturally to be inferred that when one dedicates his land to be used as a burial ground, and for that purpose only, he intends a fee to be vested in the trustees as long as it is used for that purpose, which might be forever. If, however, the court should hold that by the terms of

the grant only a life estate passed, or that at most it was a bare fee determinable upon the cessation of the use, when at once the legal estate vests in the heirs without entry, with the power to convey that right of entry, as was held in Slegel *v.* Lauer, *supra*, still we say that, even if it be the fact that our title is a legal and not an equitable one, yet our place is in a court of equity and not in a court of law. We have no remedy at law. The learned counsel for the defence says that the case is one of disputed title, and we must bring ejectment, but we can only bring ejectment when some one is in the actual possession of our property. The *locus in quo* is in the *actual* possession of no one; as we have seen, it is vacant property, out among the commons. But conceding the legal title to be in us, then that legal title draws to it the possession *constructively;* that is to say, when land is not in the actual possession of either party claiming it, it is said to be "in the constructive possession of him who has the better title."

"Both parties cannot be seized at the same time of the same land under different titles, and the law therefore adjudges the seizin of all which is not in the *actual* occupancy of the adverse party to him who has the better title."

Lessee of Clark *v.* Courtney, 5 Pet. 354.

"In a conflict of title and possession, the constructive actual seizin of all land *not in the adverse possession and occupancy of the other* is in the party having the better title."

Barr *v.* Gratz, 4 Wheat. 213, 233.

Moreover, if the court takes the view that the legal title passed to the complainants by the cessation of the use of the land as a burial-ground, then the very facts set up in

the bill are equivalent to an averment of seizure and possession.

"The bill alleged that complainant was 'seized in fee of the said tract of two hundred acres, more or less,' and that this is a sufficient allegation of possession of the land has been determined by this court." Summons Creek Coal Co *v.* Doran, 142 U. S. p. 449; citing Gage *v.* Kaufman, 133 U. S. 471.

Having no remedy in ejectment because the defendant is not in possession of our land, and being ourselves in the constructive possession, we have all the possession which is necessary to entitle us to come into equity and ask the court to remove from our title the cloud which the defendant has thrown over it by obtaining deeds from the heirs of the trustees; and after removing this cloud the court, of course, has jurisdiction to go on and grant partition.

But let us suppose the defendant to be in possession. Can he rightfully demand that we shall first maintain our title (supposing it to be a legal one) in ejectment before coming into equity for partition? If, as we have seen, both the plaintiff and the defendant "discover" their respective titles to the court, and it appears from the titles so shown that the question is merely one of *construction* to be placed upon a deed, and not one of disputed *fact* which a jury must decide, a court of equity is as competent to construe the deed as a court of law.

In the case at bar the defendant says: "I have the title to this property by reason of the deeds to me by the heirs of the surviving trustees." The plaintiffs, on the other hand, say *they* have the legal title by reason of the determination of the estate of the trustees, the land having *ceased* to be used as a burial ground. Upon the decision

of that question rests the right of the respective parties, and that is not a question for a jury to decide, but the court. One of the other of the parties is seized of the land under the admitted facts of the case. We contend that under these admitted facts we are seized of it, and that the *bare denial* of the defendant raises no question which requires us to submit our disputed right to a jury. If there were some serious question of disputed fact, the case, of course, would be different.

"The *bare denial* of the complainant's title is no obstacle to the court's proceeding with partition. The defendant must answer the bill, and if he sets up a title adverse to the complainant, or disputes the complainant's title, he must discover his own title. If, when the titles are spread before the court upon the pleadings, the court can see there is no valid *legal* objection to the complainant's title, there is no reason why the court should not order the partition. But where there are *serious* questions of law and *fact* involved in the controversy between parties as to the title, the court retained the bill and gave the parties an opportunity of settling the title at law."

Lucas *v.* King, 10 N. J. Eq. 277.

"The limitations attending proceedings in partition are constantly weakening, and the tendency to do full and complete justice to the parties in one action is becoming irresistible. Wherever the question has recently arisen as a new question, the answer to which the courts were free to give without consulting decisions made at an early day when the common-law rules were more potent than at present, it has been resolved in favor of taking jurisdiction whenever the complainant shows himself *seized* of the requisite title whether the lands sought to be partitioned are *held adversely* to him or not."

Freeman on Partition, sec. 450.

It will be observed, as we have already pointed out, that the land in this case is not *held* adversely to us. At

the same time, Grimshaw's deed from one of Stephney Forrest's heirs makes him a tenant in common with the other heirs of any title that the heirs of Stephney Forrest are entitled to. In Overton's Heirs *v.* Woolfolk (6 Davy, Ky. 371), the defendants denied the title of the complainants and set up an adverse possession in themselves of the property, but the period of occupation was admittedly less than that required by the statute to ripen into a title. The court said:

"We know of no adjudged case in which the principle has been settled that the *bare fact* of an adverse holding of part of the land by one joint tenant in common would be a good ground to defeat the jurisdiction of a court of equity in a bill for partition until after the right to possession was settled at law."

The court then discusses the question whether *a mere denial of the title* would oust the jurisdiction, and says it is only where the complainant's title is "doubtful or suspicious" that he will be sent to a court of law. If the plaintiff's title be *clear*, as it must be in the case at bar, under a proper construction of the deed, and the admitted facts in the case show that the defendant has no title except to a one-seventh of the property as a tenant in common with the plaintiffs, it would be a useless encouragement of litigation to postpone partition for a suit at law which can have but one ending, simply because the defendant litigiously denies the title of those who on *his own showing* are tenants in common with him.

The foregoing principle was also decided in the following cases:

Math *v.* De Bardeleben, 75 Ala., at p. 71.
Hawley *v.* Soper, 18 Vt. 320.
Miller *v.* Dennett, 6 N. H. 109.

Marshall *v.* Crehore, 13 Metcf. 462.
Godfrey *v.* Godfrey, 17 Ind. 6.
Howey *v.* Gosings, 13 Ill. 95.
Obert *v.* Obert, 2 Stockton (10 N. J. Eq.), 98.
Lucas *v.* King, *ib.* 272.
Tabler *v.* Wiseman, 2 Ohio St. 207.
Campbell *v.* Lows, 9 Md. 500, at p. 511; and
the cases cited in these cases.

In Godfrey *v.* Godfrey (17 Ind. 6), heard on demurrer to the bill, it appears that the Indiana statute provides that "all persons holding lands," &c., may have partition, and the court said it would not construe the word "holding" as requiring actual occupancy, but as equivalent to owning or having *title* to lands. We submit that the same construction is to be given the act of Congress August 15, 1876 (19 Sts. 202; Rich. Suppl. 247), which provides that—

"All tenants in common and copartners of *any estate* in lands, tenements, or hereditaments, equitable as well as legal, within the District of Columbia may, in the discretion of the court, be compelled, in any court of competent jurisdiction, to make or suffer *partition* of such estate or estates."

* * * * * * *

"And in proceeding for partition under this act, the court may, in *addition* to the powers herein conferred, exercise such powers as are or may be conferred by virtue of the general equity jurisdiction of the court."

The act, it will be observed, does not require *possession*, actual or constructive; it gives the remedy "to all persons *having* any estate," which, we submit, means having title with right of entry, and the heirs of Stephney Forrest have, under the defendant's own showing, a right of

entry. The question whether the Union Beneficial Association be extinct is, we submit, not a disputed fact; it is a question of law, to be decided upon *admitted facts.* It is admitted that there were but *three* members of the association living at the time of the filing of the bill, one of whom has since died. The question of law is, can the association, under such circumstances, be said to be in existence? That question this court is as competent to determine as a court of law.

But if the association were still in existence, yet it is *admitted* that the land has ceased to be used as a burial ground, and that the bodies are exhumed and deposited elsewhere, and, also, that the defendant is attempting to sell the land in order to divide the proceeds among two members and himself. That admitted fact of itself settles as a question of law the right of the plaintiffs either to claim the property as a resulting trust or as a reversion, and to have partition thereof among the tenants in common.

In any aspect, therefore, which may be taken of the case, the court has ample jurisdiction to determine the equities of the complainants.

H. O. CLAUGHTON,
FRANKLIN H. MACKEY,
Solicitors for Complainants.

FILED
DEC 9
JAMES H. Mc

165-342

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. ~~121~~ 18.

MARTHA HOPKINS ET AL.

vs.

WILLIAM H. GRIMSHAW.

BRIEF FOR APPELLEE.

W. L. COLE,
J. J. DARLINGTON,
Solicitors for Appellee.

Law Reporter Print.

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BRIEF FOR APPELLEE.

STATEMENT OF FACTS.

In the year 1841, an unincorporated society of colored persons was formed, known at first as the Ebenezer Beneficial Society and later as the Union Beneficial Society. Its objects appear to have been the payment of sick benefits, and providing for the burial of its deceased members, with some contribution to the widows and children of such members. Record, pp. 125 *et seq.*

Only men were eligible to membership, but a society of females for similar purposes co-existed with it, each society being separate from and independent of the other. Record, p. 22.

On the 9th day of August, 1845, William Noland, then Commissioner of Public Buildings, conveyed ten lots of ground, comprising the north half of square No. 1089, in the city of Washington, to Stephney Forrest, a member of the society, who by deed without date, but acknowledged September 25, 1849, conveyed the same to David Redden, Daniel Simms and William Barton as trustees for the Union Beneficial Society, to have and to hold to themselves and their successors in office *forever*, for the sole use and

benefit of the society, "for a burial ground and for no other purpose whatever," with covenants of special warranty and for further assurance. Mr. Noland, also, on the same day, viz, August 9, 1845, conveyed the lots comprising the south half of the square to Israel Wallace, who, on October 6, 1845, conveyed the same to trustees for the Colored Female Union Society, for cemetery purposes. Record, pp. 113, 119.

Stephney Forrest was a member of the Union Beneficial Society, and the testimony of his wife and daughter, who are uncontradicted, shows that he purchased the property for the society, with funds obtained from it for the purpose, and that Israel Wallace, in the purchase made by him on the same day, acted merely as agent for the Female Society. Record, pp. 50–56. The recital of the consideration received, in the deed from Forrest to the trustees of the society, is the full amount expended by him in the purchase, as set forth in the deed from the Commissioners of Public Buildings, and both deeds were recorded on the same day, affording circumstantial corroborative evidence that both were parts of a connected, single transaction.

Each society used its half as a cemetery for some forty years, when the same were by a municipal ordinance declared a nuisance injurious to health, and further interments prohibited, after which, and in accordance with said order, all bodies were exhumed and removed to another cemetery, outside of the city limits, by the appellee, William H. Grimshaw, acting as the agent of the two societies, under authority from the surviving members of each of them, and after having first obtained conveyance of the legal title from the heirs of the deceased trustees; after which the south half of the square was sold by him, and every dollar of the proceeds, after defraying the necessary expenses, was accounted for by him to the surviving members of the Female Society, and to its entire satisfaction. Record, pp. 62, 63.

The cost of exhumation and reinterment of bodies buried in the north half of the square, which is the property in

controversy here, was nearly $2,000.00 (Record, pp. 67, 68), advanced by Grimshaw, which moneys were to be repaid through sale, ultimately to be effected, of the disused site, which sale has thus far been prevented by the pendency of this suit.

The heirs of Stephney Forrest (with the exception of a daughter, Mary J. Brooks, who was Grimshaw's mother-in-law, and who gave a quit claim deed to him), and their co-complainant Horace S. Cummings, stood by in silence while these expenses were being incurred and until the work of exhuming and removing the bodies was completed; whereupon Mr. Cummings, on April 16, 1889, filed the bill set out at pages 151–4, of the Record, claiming that he had obtained deeds from the heirs of Stephney Forrest, vesting in him "the entire and full beneficial interest and estate in and to said property;" and that a complete title to the same would be his when the court should decree forfeiture and reverter of the land because of its disuse "for a burial ground," as provided in the deed from Stephney Forrest; such decree of forfeiture and reverter being the relief sought by the bill. A month later Mr. Cummings seems to have discovered the rule of the common law, established, as this court say in Schulenberg *vs.* Harriman, 21 Wall. 63, by the authorities, with hardly an exception from the year books down, that forfeiture for breach of a condition subsequent cannot be taken advantage of by anyone other than the grantor or his heirs, and is defeated by grant from them to a stranger; and he accordingly dismissed that bill and filed the present suit, joining with him as co-complainants the heirs of Stephney Forrest, other than Mary J. Brooks, alleging, in contradiction of his former bill, that the conveyances to him were merely in trust for his co-complainants—an allegation which is responsively and distinctly denied in the answer, and is not attempted to be supported by any testimony in the cause.

The present bill alleges:

(*a*) That the Union Beneficial Society became so reduced in membership that it disbanded and went out of existence six or seven years before the filing of the bill. This allegation is denied by the answer, is not attempted to be proved, and is affirmatively disproved by the testimony. (Record, pp. 20, 29, 30, 69, 71, 82.)

(*b*) That, in 1883, the municipal authorities prohibited further use of said real estate as a burial ground, and that such use was thereupon abandoned and all the bodies interred were exhumed and removed in accordance with said municipal order. These allegations are admitted by the answer.

(*c*) That by virtue of the deed from Mary J. Brooks to Grimshaw, and by virtue of the deeds from the other heirs of Stephney Forrest to Cummings, Grimshaw and Cummings will become tenants in common of the legal title when the court shall have decreed the reverter to which the complainants claim to be entitled under the terms of the deed from Stephney Forrest to the trustees of the society. The answer alleges that the property was used by the society solely as a burial ground as long as it was lawful to so use it; that it ceased such use only when compelled by law to do so, and denies that the deed from Forrest created an estate upon condition that the deeds from his heirs to Cummings passed any title, and that there is or can be any reverter under the terms of the deed and facts of the case.

The relief prayed by the bill is, in substance, that the ground may be decreed to have reverted to the heirs of Stephney Forrest under the terms of the original conveyance, the municipal order, and the carrying out of the latter as set forth in the bill; that the deeds from the heirs of the surviving trustees of the society may be declared void as clouds upon the complainants' title, and that partition may be made between the complainants and Grimshaw.

From the foregoing, it will be seen that the only issues raised by the pleadings are three, namely:

I. Whether the bill will lie to have declared void the deeds from the heirs of the trustees to Grimshaw as a cloud upon the complainants' title.

II. Whether the prayer for partition contained in the bill can give jurisdiction.

III. Whether title to the land in controversy reverted to the heirs of Stephney Forrest when it ceased to be used as a burial ground, under the circumstances disclosed by the record.

Two other points, not raised by the pleadings, were urged below, viz:

IV. That, the word "heirs" not being used in the deed from Forrest to Redden and others, that conveyance was limited to a mere life estate, leaving the property to revert to Forrest and his heirs upon the death of the trustees, which has now happened.

V. That the deed from Forrest to Redden and others was void from the beginning, as being a conveyance to an unincorporated body.

I.

The jurisdiction to remove cloud upon title cannot be invoked under the circumstances of this case. Neither the complainants, nor the ancestor under whom they claim, have been in possession of the property since 1845, if ever in possession of it. The bill, itself, shows that the defendant Grimshaw, within a few days before the filing of the bill, was engaged in exhuming and removing from the premises the bodies buried therein. It also appears that the society had the premises enclosed by a fence for many years past, and there is nothing whatever in the record showing, or tending to show, entry or ouster of the defendants from the actual, open and notorious possession of the premises, which they have held ever since the date of the deed from Forrest to Redden and others, trustees. Under such circumstances,

an action of ejectment is the proper means of dissipating the alleged cloud.

Holland *vs.* Challien, 110 U. S., 15.

Even if it were true that disuse of the land for burial purposes entitled the complainants to demand a forfeiture, their right must have been first asserted by entry or its equivalent.

Schulenberg *vs.* Harriman, 21 Wall., 63.
2 Blackstone Com., 155.
Wash. on Real Prop., 450–452.
2 Cruise Dig., 42.
Warner *vs.* Bennett, 31 Conn., 477.
Tallman *vs.* Snow, 35 Me., 342.
Sperry *vs.* Sperry, 8 N. H., 481.
Railroad Co. *vs.* Neighbors, 51 Miss., 412.

It is essential to maintain a bill to remove cloud that the complainants should be in actual possession. In the case at bar, the complainants have a plain and clearly adequate and complete remedy at law in the action of ejectment, which circumstance, alone, is fatal to the jurisdiction of equity.

Buzard *vs.* Houston, 119 U. S., 351.
Kramer *vs.* Kohn, 119 U. S., 357.

II.

It is abundantly apparent upon the face of the bill, even without reference to the answer and testimony, that this is a case of disputed title. That proceedings in partition are not appropriate for such contention, and that partition cannot be had under such circumstances, has been repeatedly adjudicated. It will be sufficient to refer to the case of McCall v. Carpenter, 18 How., 297.

The claim that complainants are entitled to partition in equity because their title is equitable, is at war with the very foundation of their case as stated in their bill. If

there is reverter at all, it is quite as much of the legal as of the equitable title. Indeed, the word "heirs" being omitted from the deed, it is only the equitable or beneficial interest which has preserved the legal estate beyond the life of the trustees.

Even if the word "heirs" had been employed, and a legal title thus given, in express terms, to the trustees, such legal title would have terminated with the extinction of the trust.

Young *vs.* Bradley, 101 U. S. 782.

The complainants' theory of an equitable title, or of a resulting trust, is therefore manifestly untenable.

III.

This brings us to the substantial question in the case, which, in turn, resolves itself into a two-fold inquiry, namely: First, whether the clause in the deed from Forrest to Redden and others "for a burial ground and for no other purpose whatever," creates a condition subsequent; and secondly, if so, whether that condition can be enforced in this action.

1. We submit, in the first place, that if this were the case of a condition subsequent, it could not be enforced in this action, for the reason, among others, that the heirs of Stephney Forrest have conveyed their interests to the complainant Cummings, and that grant by the original grantor or his heirs precludes forfeiture.

The bill in this case, it is true, alleges that the conveyances to Cummings were merely in trust for the other complainants. This allegation, however, is specifically denied in the answer, the denial being strictly responsive to the allegation of the bill in that regard, the averment of the answer being that he sues in his own right, and for his own use, benefit and profit. No testimony in support of the allegation that he is trustee for his co-complainants,

or that that they have any interest whatever in the property, was ventured upon by the complainants, notwithstanding the issue thus directly raised upon that question. Under well recognized rules of equity pleading, therefore, it is to be taken as conclusively established in this cause that Cummings holds, as was alleged in his former bill, introduced in evidence by the defendant at pages 151–154 of the printed record, "the entire and full beneficial interest and estate in said property," if the theory of condition subsequent and consequent reverter should prevail.

That no one can take advantage of the non-performance of a condition subsequent annexed to an estate in fee other than the grantor or his heirs, this court has said is established by the authorities, with hardly an exception, from the Year Books down.

Schulenberg *vs.* Harriman, 21 Wall., 63.
Ruch *vs.* Rock Island, 97 U. S., 693.

Even if this were not so, it is difficult to see upon what theory the complainants could appeal to this court for enforcement of the forfeiture. They are out of possession, and no obstacle to an action of ejectment is apparent upon the record.

2. It remains to be considered whether the clause in the deed from Forrest to Redden and others, "for a burial ground and for no other purpose whatever," creates a condition subsequent. We submit that it does not, for the following reasons:

In the first place, it is shown by the testimony of the wife and daughter of Stephney Forrest, corroborated by the recital of the deeds as to the consideration, the fact that the two deeds were recorded on the same day, and by the further fact that the south half of the same square was simultaneously purchased and conveyed to the Female Society for similar purposes by their representative, that this land was bought and paid for by Stephney Forrest

with the society's own funds. The wife testifies that thi was a fact well known at the time the ground was bought, and neither her testimony nor that of her daughter is attempted to be contradicted in any manner whatsoever. Two of the complainants are children of Stephney Forrest, and testified in the cause.

It was objected below that the testimony of Rachel Forrest, one of the witnesses to the fact in question, must be eliminated, on the ground that she was the wife of Stephney Forrest at the time, and therefore disqualified to testify to "confidential communications" made to her by him during coverture. The very authorities relied upon in support of the objection show, however, that such disqualification of the wife, after the husband's death, is restricted to private conversations, not held in the presence of any third person, and that non-confidential information is not privileged.

19 Am. & Eng. Ency., pp. 153, 154.

See, also, U. S. *vs.* Guiteau, 1 Mackey, p. 548.

In the case at bar, the fact in question was declared by Forrest in the presence of both his wife and daughter. So far from being confidential information, the wife testifies (Record, p. 56) that it was a well known fact at the time; and, as stated, although two of the complainants are Forrest's children, both of whom were called as witnesses, at least one of them having been a member of the Female Society, and both having been of adult age at the time of the purchase, no attempt at contradiction or denial was made.

It is difficult to see how the return of Forrest from the house of the secretary, with the money of the society given him for the purpose of purchasing the ground tied up in a handkerchief (Record, pp. 54, 55), can be considered a "confidential communication."

In the second place, the deed from Forrest to Redden and others recites a valuable consideration, and, indeed, the identical consideration recited in the deed from the Com-

missioners of Public Grounds to him, showing that he received from the society the full value of the ground.

That, where property has been sold for a valuable consideration, words limiting the use do not create a condition subsequent or entitle the grantor to re-enter if the use be varied, unless the right so to do is expressly reserved in the conveyance, is well settled by the authorities. The only known conflicting opinion is that in Reed et al. *vs.* Stouffer, 56 Md. 254; and in this case the question was largely premature and *obiter*, there having been no diversion of the use in fact, but merely a contemplated voluntary diversion, without any substantial reason therefor, and apparently for purposes of speculation. The overwhelming weight of authority is that no such condition exists where a valuable consideration was given, nor, indeed, without one, in the absence of apt words for the purpose.

Rawson *vs.* Uxbridge, 7 Allen, 125.
Packard *vs.* Ames, 16 Grey, 327.
Ayer *vs.* Emery, 14 Allen, 67.
Strong *vs.* Doty, 31 Wis., 331.
Brown *vs.* Caldwell, 23 W. Va., 187.
Farnham *vs.* Thompsom, 34 Minn., 330.

The case of Slagel *vs.* Lauer, 148 Pa. St. 236, is expressly placed upon its own peculiar facts, and the general rule in ordinary cases recognized to be as above stated. See opinion at pages 242, 243.

If it were worth while to discuss the question further, it might be added that, even if there were in this case a valid enforceable condition subsequent that the land should be used for no other purpose than a burial ground, the right to enforce it would require, not merely disuse for that purpose, but affirmative use for some other.

Crane *vs.* Park, 135 Mass. 147.

The case of Reed *vs.* Stouffer, supra, relied upon by appellants, is, moreover, inapplicable to the present case, for the reason, among other things, that that was the case of a proposed disuse of the burial ground without any occasion or necessity therefor, while the case at bar was under and by reason of legal compulsion.

Wheeler *vs.* Moody, 9 Tex. 372.

IV.

The grant from Forrest to the trustees is "to them and to their successors in office forever, for the sole use and benefit of the Union Beneficial Society."

Apart from the sufficient objection that the point urged against this conveyance, namely, that the omission of the word "heirs" limits it to a life estate, is not raised by the pleadings, and, therefore, cannot be considered in this action, and apart from the further objection that the complainants, in lying by in silence and inaction for many years after the death of the trustees, and while the defendant Grimshaw was expending large sums of money in the removal of the bodies from the ground, have been guilty of such laches as precludes relief, we submit that the construction contended for is wholly untenable.

Wherever property is conveyed to a trustee for a designated purpose, the estate given him will be construed to be co-extensive with the purposes of his trust. Thus, where property has been conveyed to a trustee, without the word "heirs," for the payment of the grantor's debts, it has uniformly been held that the trustee may sell and convey the fee simple interest, as being necessary to the purposes of the trust.

It would be a singular contention that this cemetery was to be used as a last resting place for the dead so long as the three trustees should live, and that upon the death of the last survivor of them the land, with the bodies interred in

it, should revert to and become the private property of the heirs of Forrest.

In Terret *vs.* Taylor, 9 Cr. 43–53, this court held, in the case of a similar conveyance, that the warranty in the deed, binding the grantor and his heirs forever, operated to confirm to the church and its privies the perpetual beneficial use of the land. In Inglis *vs.* Sailors' Snug Harbor, 3 Pet. 99, no doubt was entertained that a devise to trustees and their successors passed a fee in the property so devised: while, in Showerman *vs.* Miller, 6 Md. 479, a deed to trustees and their successors forever, without words of inheritance, conveying a lot for the purposes of a school, was held to pass a fee simple title. See, also, Russell *vs.* Allen, 107 U. S. 163.

In Beatty v. Kurtz, 2 Pet. 566, the mere designation of the lot on a plat as being "for the Lutheran Church," was held to carry a fee.

V.

The fifth and last of the points argued in support of the bill in the court below was, that the deed from Forrest to Redden and others was void, *ab initio*, as being a conveyance to an unincorporated body.

The authorities cited below in support of this proposition, taken mainly from the decisions of this court, were all cases in which grants were made to unincorporated bodies without the intervention of trustees, and in which such grants were held invalid because of the failure to vest the title in trustees for the benefit of such unincorporated associations.

Not one of them holds that a gift to trustees for the benefit of a voluntary unincorporated association is invalid, provided the purposes or objects of the gift or grant possess sufficient legal certainty, and the first of them, viz., Baptist Association *vs.* Hart's Executors, 4 Wheat. 27, is, morever, virtually overruled in Russell v. Allen, 107 U. S. 167.

In Beatty *vs.* Kurtz, 2 Pet. 566, a gift to an unincorporated body, namely, "The Lutheran Church," by the

mere designation of it on a plat as above pointed out, was sustained by this court, notwithstanding the fact that the society was not in existence at the time of the gift, nor even at the time of the filing of the bill, members of the Lutheran denomination having occupied and used the lot of ground in question for the purpose of a school house and a burial ground.

A very large part of the testimony in this case has been devoted to matters wholly irrelevant to the questions at issue; as, for example, whether more than one, and, if so, how many bodies were buried in the same site; what the surviving members of the association did with the money paid for burial sites, and what they propose to do with the surplus proceeds of the sale of the land, if there shall be a surplus; whether the name of Philip Wells, one of the surviving members, was signed by his daughter to Grimshaw's power of attorney as claimed by Grimshaw, or by Wilkerson, another surviving member, or by Grimshaw himself, and the like—all of which questions, as must have been apparent at the time, are wholly foreign to any of the issues in the cause. A considerable portion of the testimony, accompanied in the original by photographic exhibits, offers an exceptionally humorous commentary upon so-called expert testimony. Counsel for the defendant have declined to pursue these lines of investigation, even to the extent of cross-examining the witnesses; and, with due regard to the time of the court, refrain from any discussion of them in their brief.

We submit that the decree of the court below, dismissing the complainants' bill, but reserving such rights as the representatives of Stephney Forrest may have in any surplus proceeds of sale, after defraying the costs of the removal and re-interment of the bodies, should be affirmed.

Respectfully submitted,

W. L. COLE,
J. J. DARLINGTON,
Solicitors for Appellee.

165-342

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. ~~121~~ 18.

MARTHA HOPKINS, ET AL.
vs.
WILLIAM H. GRIMSHAW.

Brief in Reply to Brief for Appellee.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
Solicitors for Appellants.

PRESS OF W. F. ROBERTS, WASHINGTON, D. C.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1895.

No. 121.

MARTHA HOPKINS, ET AL.
vs.
WILLIAM H. GRIMSHAW.

Brief in Reply to Brief for Appellee.

There are two decisions of this Court cited by appellee which can be clearly differentiated from the case at bar.

The first is Beatty *vs.* Kurtz, 2 Peters, 566. It is conceded that in this jurisdiction public charities are not recognized, and that if this grant to the use of the Union Beneficial Society can be sustained it must be sustained as an express trust. The case of Beatty and Ritchie *vs.* Kurtz *et al*, 2 Peters, 566, was decided under the Bill of Rights of Maryland, which gives validity to "any sale, gift, lease or devise of any quantity of land not exceeding two acres for a church, meeting house, or other house of worship, and for a burying ground, which shall be used, improved and enjoyed only for such purposes." It will be observed that it is the sale, gift, lease or devise to a house of worship that is valid, and the expression "and a burying ground" is valid also because it is attached and appurtenant to and a part of the general use for pious purposes.

And there is nothing in the Bill of Rights or in the case cited which sustains the contention that under the Bill of Rights a gift, grant, lease or devise of land for the use of any other than a church or house of worship, for a burying ground, and no other purpose, would be sustained. It will furthermore be observed that the Bill of Rights uses substantially the language used in the deed of Stephney Forrest, to wit, to be enjoyed and used "only for such purposes."

It is submitted that even in the case provided for by this provision in the Bill of Rights and decided in Beatty *vs.* Kurtz to be valid, if the property had ceased to be used for a house of worship and a burying ground, there would have been a reverter or resulting trust to the original owners or their heirs.

The other authority relied upon by the counsel for the appellee, Russell *vs.* Allen, 107 U. S. 163, was decided solely upon the ground that the trust was a charity, and that charities were recognized in Missouri and in Arkansas; the land in the case being located in Arkansas, and the charity for whose benefit the land was granted being located in Missouri. But charitable trusts, as we have found, are not recognized or sustained in this jurisdiction. The court in that case expressly excluded Maryland from the operation of the Statute of 43 Elizabeth Ch. 4, and held the same doctrine in Ould *vs.* Washington Hosp. 95 U. S. 303. To make a trust valid which has the character of a charity it must come within the particular and express provision of the Maryland Bill of Right and even when it does come within that provision, according to the terms of that provision it must be used only for those purposes, and when used for any other purpose would revert to the owner or his heirs. The resulting trust to the owner or his heirs can be defeated only upon the ground that the trust is a public charity, and that although the specified and particular form of the charity is not possible a resulting trust is defeated by the application of what is known as the *cy pres* doctrine. This doctrine is not a favorite of Courts of Equity, and never has been. It is a mere presumption of law, and therefore if it

appears from the wording of the instrument that the individual charity was the only one in the donor's mind, and that if it should fail, he intended the property to revert to himself, there is no equity to alter his disposition. Adams on Equity, pages 71 and 72, citing divers authorities.

There is an assertion in the brief of defendant that one of the plaintiffs, Cummings, is the beneficial owner of the property in question. This can hardly be sustained in the face of the fact that the bill declares him simply a trustee and his *cestuis que* trustees join as co-plaintiffs. Their testimony shows that they are the real plaintiffs, Cummings being, as the deed offered in evidence shows, a mere trustee to sell for their benefit the title was centered in him as a matter of convenience, in the prosecution of the suit and the sale of the property.

FRANKLIN H. MACKEY,
H. O. CLAUGHTON,
Solicitors for Appellants.

65-359

15-359

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. ~~443~~. 162

JOSEPH ROBINSON, APPELLANT,

vs.

WILLIAM A. CALDWELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO.

FILED SEPTEMBER 4, 1894.

(15674.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 443.

JOSEPH ROBINSON, APPELLANT,

vs.

WILLIAM A. CALDWELL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IDAHO.

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1 *Complanit.*

In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT. } Complanit.

The plaintiff complains of the defendant and alleges:

I. That one William Craig was a native-born citizen of the United States; that he was born in Greenbrier County, in the State of Virginia, in the year 1807; that on the sixth day of July, 1838, the said William Craig intermarried with Isabel Craig, an Indian woman, and belonging to the Nez Perce tribe of Indians; that the said William Craig and his wife, Isabel Craig, on the 15th day of September, 1846, located and settled upon the following-described tract of land:

Beginning at a stake thirty yards north of Lapwai Creek, thence west two miles to a pile of rocks, thence south a half a mile to a stake, thence east two miles to a cottonwood tree, thence north half a mile to the place of beginning, containing six hundred and forty acres, which said tract of land was a part of the public domain of the United States, lying in the Indian country in the then Territory of Oregon, but now in the State of Idaho, and included within the bounds of the present Nez Perce Indian Reservation.

II. That the said William Craig and his wife, Isabel Craig, continued to reside upon, occupy, and cultivate the said tract of land from the said 15th day of September, 1846, until the 4th day of June, 1855, when the said William Craig, his wife then being alive and residing with him
2 upon the said tract of land, filed his notification to the register and receiver of the land office of the then Washington Territory, situated at Olympia, for the settlement of the said land, which had not yet been surveyed, in the following words and figures, to wit:

Pursuant to the act of Congress, approved on the 14th day of February, 1853, entitled "An act to amend an act entitled an act to create the office of surveyor-general of the public lands in Oregon, and to provide for the survey and make donations to the settlers of the public lands," and amendments thereto, I, William Craig, of Walla Walla County, in the Territory of Washington, hereby give notice of my claim to donation of six hundred and forty acres of land, particularly bounded and described as follows: Beginning at a stake thirty yards north of Lapwai Creek, thence west two miles to a pile of rocks, thence south half a mile to a stake, thence east two miles to a cottonwood tree, thence north half a mile to a place of beginning. (Signed) "William Craig," and filed the same in the office of the register and receiver of the said land office, June 19th, 1855.

III. That the said William Craig and his wife, Isabel Craig, continued to reside upon and cultivate the said land and to perform all the requirements and provisions of the said act of Congress as aforesaid; and that prior to his death, which occurred in the year 1869, the said William Craig and his wife fully complied with the provisions of said act of Con-

gress, and they were informed by the officers of the land office of said Washington Territory that they had fulfilled all requirements of the said act, and that there was nothing further for them to do in the premises to protect their title to the said land.

IV. And the plaintiff further alleges that in a treaty made between the Government of the United States and the Nez Perce Indians on June 11th, 1855, as will more fully appear in 12 Statutes of the United States, page 957, by article 10 of said treaty, it was agreed, in consideration of the said Craig having uniformly shown himself a friend to the Nez
3 Perce Indians, "that the tract of land now occupied by William Craig, and described in his notice to the register and receiver of the land office of the Territory of Washington on the 4th day of June last, shall not be considered a part of the reservation provided for in this treaty, except that it shall be subject, in common with the lands of the reservation, to the operation of the intercourse act."

V. And the plaintiff further shows that by his compliance with all the provisions of the said statutes hereinbefore referred to and by the terms of the said treaty with the said Indians the said William Craig and Isabel Craig acquired and perfected their title to the said tract of land hereinbefore set out and described.

VI. And the plaintiff further shows that the said William Craig and Isabel Craig, who are now dead, after acquiring title to the said land and before their said death, by a proper deed of conveyance in fee simple, on February 13, 1869, conveyed all their right, title, and interest in and to the said land to one Samuel Phinney and Moses H. Rice, said Phinney having intermarried with a daughter of the said William Craig and Isabel Craig, the issue of their said marriage, and subsequently the said Rice conveyed his interest therein to said Phinney; and the plaintiff further shows that the said Samuel Phinney, under said conveyance, went into the possession of and continued to occupy and cultivate the said land until the 9th day of March, 1891, when the said Samuel Phinney, by a proper deed of conveyance, conveyed all his right, title, and interest to an undivided one-half interest in the said tract of land to William A. Caldwell, who is the plaintiff in this action. And the plaintiff further shows that on the said 9th day of March, 1891, in common with the said Samuel Phinney, he went into possession of the said tract of land, and has, with the said Phinney, continued ever since to occupy, cultivate, and use the same.

VII. The plaintiff further alleges that on the 30th day of September, 1893, the defendant, Joseph Robinson, who claims to have control over the said land and to an interest therein, notified the plaintiff that
4 he must remove from said land, together with his family, and the said defendant threatened plaintiff that unless plaintiff removes from said land on or before the first day of Nov., 1893, together with his family and effects, that he will come upon said land with force and arms and eject and drive off the plaintiff from the said land and premises.

VIII. That the said defendant without any right or title claims the control and possession of the said lands and premises, and this plaintiff shows to the court that unless the said defendant is restrained by an order of the court he will proceed to execute his said threat to eject said plaintiff from said land by force, and with the help of armed men as aforesaid.

IX. That the plaintiff has growing upon said land a large crop of grain, amounting to several hundred acres, and garden vegetables, and he has cattle and stock upon said land and premises, and has built his home thereupon, and it is his homestead and residence; and that if the plaintiff is allowed to come upon his said land and execute his threats that he will tear down his fences, destroy his grain, and drive the plaintiff from his home, and his said crop and his said improvements will be a total loss to the plaintiff. That the defendant is insolvent and unable to respond in damages, and that the plaintiff is without any adequate remedy at all to prevent the said grievance and wrong threatened against him by the said defendant, and is entirely remediless without the equitable interposition of this honorable court; and if the defendant is permitted to go on and execute his threat—destroy his crop and his enclosures, scatter his stock as hereinbefore alleged, and drive plaintiff from his home and residence—that plaintiff will suffer great and irreparable injury.

X. That the plaintiff is the owner of an undivided half interest in said tract of land mentioned and described in the first paragraph of this complaint, as the grantee of said Samuel Phinney, and as tenant in common with the said Phinney is entitled to the possession thereof.

5 Wherefore the plaintiff prays judgment for an order restraining the said defendant by injunction from interfering with plaintiff in the possession or enjoyment of said land and premises, and restraining him from ejecting and driving plaintiff therefrom by force as hereinbefore mentioned, and that on the final hearing of this cause the said injunction may be made perpetual, and that defendant and all others may be forever enjoined from interfering with the possession and enjoyment of said land and premises by the plaintiffs, and that the title and possession to the same may be quieted and confirmed in the plaintiff; and for such other and further relief as is just and equitable.

JAS. W. REID,
Attorney for the Plaintiff.

STATE OF IDAHO,
County of Nez Perce, ss:

William A. Caldwell, being duly sworn, says that he is the plaintiff in the above-entitled action; that he has read the foregoing complaint and knows the contents thereof, and that the same is true of his own knowledge, except as to matters which are therein stated on his information or belief, and as to those matters that he believes to be true.

WILLIAM A. CALDWELL.

Subscribed and sworn to before me this 18th day of Oct., A. D. 1893.
[SEAL.] JAMES W. POE, *Notary Public.*

6 In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

STATE OF IDAHO,
County of Nez Perce, ss:

I, H. K. Barnett, the duly qualified and acting clerk of the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce, and ex officio auditor and recorder of said county, and the legal custodian of all the records and files of the above-entitled

court, do hereby certify the above and foregoing complaint to be a full, complete, true, and correct copy as the same appears on file in my office, and of the endorsements thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of my office this 20th day of November, A. D. 1893.

[SEAL.] H. K. BENNETT,
Clerk District Court.

(Endorsed:) In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce. W. A. Caldwell, plaintiff, vs. Joseph Robinson, defendant. Complaint. Filed this 20th day of October, 1893. H. K. Barnett, clerk district court. Jas. W. Reid, attorney for plaintiff.

7 *Undertaking on injunction.*

In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT. } Undertaking on injunction.

Whereas the above-named plaintiff has commenced an acti'n in the district court of the second judicial district of the State of Idaho, in and for the said county of Nez Perce, against the above-named defendant, and is about to apply for an injunction in said action against the said defendant enjoining and restraining him from the commission of certain acts, as in the complaint filed in said action is more particularly set forth and described.

Now, therefore, we the undersigned residents of said county of Nez Perce, in consideration of the premises and the issuing of said injunction, do jointly and severally undertake, in the sum of two thousand dollars, and do promise to the effect that in case said injunction shall issue the said plaintiff will pay to the said party enjoined such damages, not exceeding the sum of two thousand dollars, as such party may sustain by reason of said injunction if the said district court finally decide that the said plaintiff was not entitled thereto.

Dated this 18th day of October, A. D. 1893.

W. A. CALDWELL.
JOHN M. SILCOTT.
WILLIAM BAIRD.

8 STATE OF IDAHO,
County of Nez Perce, ss:

John M. Silcott and William Baird, the sureties whose names are subscribed to the above undertaking, being severally duly sworn, each for himself says: That he is worth the sum in said undertaking specified as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

JOHN M. SILCOTT.
WILLIAM BAIRD.

Subscribed and sworn to before me this 18th day of October, A. D. 1893.

[SEAL.] JAMES W. POE,
Notary Public.

9 In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

STATE OF IDAHO,
County of Nez Perce, ss:

I, H. K. Barnett, the duly qualified and acting clerk of the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce, and ex officio auditor and recorder of said county, and the legal custodian of all the records and files of the above-entitled court, do hereby certify the above and foregoing undertaking on injunction to be a full, complete, true, and correct copy as the same appears on file in my office, and of the endorsements thereon.

In testimony whereof I have hereunto set my hand and *the* affixed the seal of my office this 20th day of November, A. D. 1893.

[SEAL.] H. K. BARNETT,
Clerk District Court.

(Endorsed:) District court, second judicial district, county of Nez Perce. William A. Caldwell, plaintiff, vs. Joseph Robinson, defendant. Undertaking on injunction. Filed Oct. 20th, 1893. H. K. Barnett, clerk. Approved this 20th day of Oct., A. D. 1893. W. G. Piper, district judge.

10 *Order of injunction.*

In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

WM. A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT. } Order of injunction.

The plaintiff in the above-entitled cause, having commenced an action in the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce, against the above-named defendant, and having prayed for an injunction against the said defendant, requiring him to refrain from certain acts in said complaint and hereinafter more particularly mentioned, on read' the said complaint in said action and it satisfactorily appearing to me therefrom that it is a proper case for an injunction, and that sufficient grounds exist therefor and upon the filing of an undertaking approved as required by me in the sum of two thousand dollars:

It is therefore ordered by me, as judge of said district court, that until further order in the premises, you, the said Joseph Robinson, and all your servants, counselors, and agents, and all others acting in aid or assistance of you, do absolutely desist and refrain from interfering or intermaddling with the plaintiff, Wm. A. Caldwell, in the quiet and peaceable possession of the lands and premises mentioned and described in the complaint in this action. Dated this 20th day of October, A. D. 1893.

W. G. PIPER,
District Judge.

11 SHERIFF'S OFFICE,
County of Nez Perce, ss:

I hereby certify that I received the annexed order of injunction on the 21st day of October, 1893, and personally served the same on the 23rd day of October, 1893, upon Joseph Robinson, defendant, by leaving at his office, with his clerk, S. Martin, at Nez Perce Agency, in the county of Nez Perce, a copy of said order of injunction and of summons, and a copy of the complaint in said action therein named, at the same time showing him the annexed original order of injunction and informing him of the contents thereof.

Dated this 28th day of October, 1893.

EBEN MOUNCE, *Sheriff.*
By THOS. D. BARTON, *Deputy.*

12 In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

STATE OF IDAHO,
County of Nez Perce, ss:

I, H. K. Barnett, the duly qualified and acting clerk of the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce, and ex officio auditor and recorder of said county, and the legal custodian of all the records and files of the above-entitled court, do hereby certify the above and foregoing order of injunction to be a full, true, complete, and correct copy as the same appears on file in my office, and of the endorsements thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of my office this 20th day of Nov., A. D. 1893.

[SEAL.] H. K. BARNETT,
Clerk District Court.

(Endorsed:) District court, second judicial district, State of Idaho, county of Nez Perce. Order of injunction. Wm. A. Caldwell, plaintiff, vs. Joseph Robinson, defendant. Filed Oct. 20th, 1893. H. K. Barnett, clerk.

13 *Summons.*

In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

WM. A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT.

To Joseph Robinson, defendant, the people of the State of Idaho send greeting:

You are hereby notified that there is now on file in the office of the clerk of the district court of the second judicial district of said State, in Lewiston, county of Nez Perce, the complaint of the above-named plaintiff, wherein judgment is demanded against you for an order restraining you by

injunction from interferring with defendant in the possession or enjoyment of said land and premises, and restraining you from ejecting and driving plaintiff therefrom by force, as hereinbefore mentioned, and that on the final hearing of this cause the said injunction may be made perpetual, and that defendant and all others may be forever enjoined from interfering with the possession and enjoyment of said land and premises by the plaintiff, and that the title and possession to the same may be quieted and confirmed in the plaintiff, and for such other and further relief as is just and equitable.

And you are also notified that unless you appear and answer to said complaint within ten days after service hereof, if served within Nez Perce County, and within twenty days if served out of said county but within said judicial district, and within forty days if served out of said district (exclusive of the day of service), the plaintiff will take a default and judgment against you for the relief demanded in the complaint.

Given under my hand and the seal of the district court of the
14 second judicial district of the State of Idaho, in and for the county of Nez Perce, this 21st day of October, A. D. 1893.

[SEAL.] H. K. BARNETT, *Clerk.*

OFFICE OF THE SHERIFF OF THE COUNTY OF NEZ PERCE.

I hereby certify that I received the within summons on the 21st day of October, A. D. 1893, and personally served the same on the 23rd day of October, 1893, upon Joseph Robinson, defendant, by leaving at his office with his clerk, S. Martin, at Nez Perce Agency, in the county of Nez Perce, a copy of said summons, and a true and correct copy of the complaint in the action named in the said summons.

Dated this 28th day of October, 1893.

EBEN MOUNCE, *Sheriff.*
By THOS. D. BARTON, *Deputy.*

15 In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

STATE OF IDAHO,
County of Nez Perce, ss:

I, H. K. Barnett, the duly qualified and acting clerk of the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce, and ex officio auditor and recorder of said county, and the legal custodian of all the records and files of the above-entitled court, do hereby certify the *the* above and foregoing summons to be a full, true, complete, and correct copy as the same appears on file in my office, and of the endorsements thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of my office this 20th day of Nov., A. D. 1893.

[SEAL.] H. K. BARNETT.
Clerk District Court.

(Endorsed:) Summons. District court, county of Nez Perce. W. A. Caldwell, plaintiff, vs. Joseph Robinson, defendant. Filed on return October 28th, 1893. H. K. Barnett, clerk, by C. E. Monteith, deputy. Jas. W. Reid, attorney for plaintiff.

16 *Notice of motion.*

In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT.

To Joseph Robinson, the defendant herein:

Take notice that the plaintiff in this action will move the court, at the court-house in Lewiston, in said county, on Thursday, Nov. 9th, 1893, at ten o'clock a. m., or as soon thereafter as counsel can be heard, to continue the order of injunction heretofore made in this case. Said motion will be made upon the complaint and summons heretofore served upon you and filed in this case.

Dated this the 30th day of October, 1893.

JAS. W. REID,
Attorney for Plaintiff.

OFFICE OF THE SHERIFF OF THE COUNTY OF NEZ PERCE,
State of Idaho, ss:

I hereby certify that I received the within notice on the 30th day of October, 1893, and personally served the same on the 30th day of October, 1893, on Joseph Robinson, being the defendant in said action, by delivereing to and leaving with said Joseph Robinson, in said county of Nez Perce, a true and correct copy of said notice.

Dated this 30th day of October, A. D. 1893.

EBEN MOUNCE, *Sheriff.*

17 In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

STATE OF IDAHO,
County of Nez Perce, ss:

I, H. K. Barnett, the duly qualified and ac'ing clerk of the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce, and ex officio auditor and recorder of said county, and the legal custodian of all the records and files of the above-entitled court, do hereby certify the above and foregoing notice of motion to be a full, true, complete, and correct copy as the same appears on file in my office, and of the endorsement thereon.

In testimony whereof I have 'unto set my hand and seal of my office this 20th day of Nov., A. D. 1893.

[SEAL.]

H. K. BARNETT,
Clerk District Court.

(Endorsed:) Wm. A. Caldwell vs. Joseph Robinson. Notice of motion. Filed October 30th, 1893. H. K. Barnett, clerk dostrict court. By C. E. Monteith, deputy clerk.

18 *Petition to remove this cause to the United States Circuit Court.*

In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT.

To the Honorable the Second District Court of Nez Perce County, State of Idaho:

Your petitioner, Joseph Robinson, respectfully shows that he is the defendant in the above-entitled suit; that the matter in dispute therein exceeds, exclusive of interest and costs, the sum of two thousand dollars; that said suit was commenced by the filing of a complaint and the issuing of a summons, or pretended summons, in said court on the 20th day of October, A. D. 1893, and that thereafter, on the 23rd day of October, 1893, the said summons, or pretended summons, together with a copy of the complaint, was served on the defendant, your petitioner in said Nez Perce County; that your petitioner has not yet filed his answer or appearance in said cause and the time to file the same has not yet expired.

Your petitioner further shows that said suit is of a civil nature in equity arising under the Constitution and laws of the United States and treaties made thereunder, of which the circuit court of the United States for the northern division of the district of Idaho is given original jurisdiction, wherein the plaintiff prays judgment for an order perpetually restraining your petitioner from interfering with the plaintiff in the possession or enjoyment of the land and premises described in the complaint herein, and that title to the said premises may be quieted and confirmed in the plaintiff.

Your petitioner further shows that said suit is one arising under the laws of the United States and certain treaties made under the authority of the laws of the United States in this, to wit:

19 The land described in this complaint is the same land referred to in article ten of the treaty proclaimed by the President of the United States, April 29th, 1859, between the United States of America and the Nez Perce Indians, which said land was afterward included in and made a part of the Nez Perce Indian Reservation in Idaho, by the provisions of the treaty proclaimed August 13th, 1868, 15 Statutes at Large, page 693; that your petitioner is, and at the time of the commencement of the suit herein was, the United States Indian agent for said Nez Perce Indians in Idaho, and as said Indian agent, claimed to exercise authority upon the land described in the complaint and in no other way; that the plaintiff herein claimed title to said land as shown in the complaint herein, by and under a certain claim to donation under the provision of the act of Congress approved Feb. 14, 1853, entitled "An act to amend an act entitled an act to create the office of surveyor-general of public lands in Oregon, and to provide for the survey and make donations to the settlers of the public lands, and amendments thereto, and also under the tenth article of the aforesaid treaty proclaimed as aforesaid, April 29th, 1859."

Your petitioner offers herewith a bond with good and sufficient sureties in the penal sum of three hundred dollars, conditioned for his entering in

the circuit court of the United States for the northern division of the district of Idaho, on or before the first day of its next session, a copy of the record in this suit and for paying all costs that may be awarded by said circuit court if said circuit court shall hold that said suit was wrongfully or improperly removed thereto.

Your petitioner therefore prays this honorable court to proceed no further herein, and your petitioner will ever pray.

JOSEPH ROBINSON.
By FREMONT WOOD,
U. S. Atty. for the District of Idaho, his Attorney.

20 In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

STATE OF IDAHO,
County of Nez Perce, ss:

I, H. K. Barnett, the duly qualified and acting clerk of the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce, and ex officio auditor and recorder of said county, and the legal custodian of all the records and files of the above-entitled court, do hereby certify the above and foregoing petition to remove cause to be a full, true, complete, and correct copy as the same appears on file in my office, and of the endorsement thereon.

In testimony whereof I have 'unto set my hand and affixed the seal of my office this 20th day of Nov., A. D. 1893.

[SEAL.] H. K. BARNETT,
Clerk District Court.

(Endorsed:) District court, second judicial district, Nez Perce County, Idaho. William A. Caldwell, plaintiff, v. Joseph Robinson, deft. Petition for removal of cause to the circuit court of the United States. Filed Nov. 2nd, 1893. H. K. Barnett, clerk district court. By C. E. Monteith, deputy clerk.

21 *Bond on removal to U. S. circuit court.*

In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT.

Know all men by these presents, that Joseph Robinson, as principal, and H. Squier and W. P. Hunt, as sureties, all residing in the said Nez Perce County, are jointly and severally held and firmly bound unto William A. Caldwell, the plaintiff above mentioned, in the sum of three hundred dollars, for which well and truly, to be paid to the said William A. Caldwell, his heirs, executors, administrators, and assigns, we bind ourselves, our heirs, executors, administrators, and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such that if the said Joseph Robinson above named, the defendant in the above-entitled cause, which is now pending in the above-entitled court, to wit, the district court of the second judicial district of the State of Idaho, in and for Nez Perce County, shall enter in the circuit court of the United States for the northern division of the district of Idaho, on the first day of the next session thereof, a copy of the record in the said suit, and shall pay all costs that may be awarded by the said United States circuit court if said court shall hold that such suit was wrongfully or improperly removed thereto, and shall also appear and enter special bail in said suit if special bail was originally requisite therein, then their obligation be void; otherwise to be in full force and effect.

JOSEPH ROBINSON. [SEAL.]
H. SQUIERS. [SEAL.]
W. P. HUNT. [SEAL.]

22 STATE OF IDAHO,
County of Nez Perce, ss:

H. Squiers and W. P. Hunt, the sureties named in the foregoing bond, being severally duly sworn each for himself, deposes and says: That he is a resident householder in Nez Perce County, Idaho, and is worth the sum mentioned in the foregoing bond as the penalty thereof over and above his just debts and liabilities, exclusive of property exempt from execution.

H. SQUIER.
W. P. HUNT.

Subscribed and sworn to before me this 2nd day of Nov., A. D. 1893.
[SEAL.] P. M. DAVIS,
Notary Public.

23 In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

STATE OF IDAHO,
County of Nez Perce, ss:

I, H. K. Barnett, the duly qualified and acting clerk of the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce, and ex officio auditor and recorder of said county, and the legal custodian of all the records and files of the above-entitled court, do hereby certify the above and foregoing bond to be a true, full, complete, and correct copy as the same appears on file in my office, and of the endorsements thereon.

In testimony whereof I have unto set my hand and affixed the seal of my office this 20th day of Nov., A. D. 1893.

[SEAL.] H. K. BARNETT,
Clerk District Court.

(Endorsed:) Wm. A. Caldwell vs. Joseph Robinson, defendant. Bond on removal to U. S. circuit court. Filed Nov. 2nd, 1893. H. K. Barnett, clerk district court. By C. E. Monteith, deputy clerk. Fremont Wood, U. S. attorney for defendant.

24 *Order accepting security and transferring cause.*

In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT.

On the pleadings and proceedings herein, and on the petition and bond filed herein on the 2nd day of Nov., A. D. 1893, by the defendant, Joseph Robinson, under the provision of an act of Congress of the United States, passed March 3rd, 1875, entitled "An act to determine the jurisdiction of circuit court of the United States, and to regulate the removal of causes from State courts and for other purposes" and the amendatory acts thereof, and on motion of Fremont Wood, U. S. district attorney for the district of Idaho, the attorney for the defendant and petitioner, it is ordered that the security offered by the said defendant, Joseph Robinson, be approved, and that this cause be removed to the circuit court of the United States for the northern division of the district of Idaho.

W. G. PIPER, *District Judge.*

Dated Nov. 3rd, 1893.

25 In the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce.

STATE OF IDAHO,
County of Nez Perce, ss:

I, H. K. Barnett, the duly qualified and acting clerk of the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce, and ex officio auditor and recorder of said county, and the legal custodian of all the records and files of the above-entitled court, do hereby certify the above and foregoing order accepting sureties and removing cause to be a full, true, complete, and correct copy as the same appears on file in my office, and of the endorsements thereon.

In testimony whereof I have 'unto set my hand and affixed the seal of my office this 20th day of Nov., A. D. 1893.

H. K. BARNETT,
Clerk District Court.

(Endorsed:) Wm. A. Caldwell, poaintiff, vs. Joseph Robinson, defendant. Order for accepting sureties and removing cause. Filed Nov. 2nd, 1893. H. K. Barnett, clerk district court. By C. E. Monteith, deputy clerk. Fremont Wood, U. S. attorney, attorney for defendant.

26 *Transcript.*

STATE OF IDAHO,
County of Nze Perce, ss:

I, H. K. Barnett, the duly qualified and acting clerk of the district court of the second judicial district of the State of Idaho, in and for the county of Nez Perce, and ex officio auditor and recorder of said county,

and the legal custodian of all the records and files of the above-entitled court, do hereby certify that the foregoing papers (complaint, undertaking on injunction, order of injunction, summons, notice of motion, petition to remove cause, bond on removal, order accepting sureties and removing cause) hereto annexed, constitute all the papers on file and records in said action, as the same appears on file and of record in my office.

In testimony whereof I have unto set my hand and affixed the seal of my office this 20th day of Nov., A. D. 1893.

[SEAL.]

H. K. BARNETT,
Clerk of the District Court.

(Endorsed:) No. 89. In the circuit court of the United States, northern division, district of Idaho. William A. Caldwell v. Joseph Robinson. Transcript. Removed by defendant. Filed Nov. 27th, 1893. A. L. Richardson, clerk.

27 *Answer.*

In the circuit court of the United States within and for the northern division of the district of Idaho.

WILLIAM A. CALDWELLL, PAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT. } Answer.

The above-named defendant for answer to the complaint on file herein admits:

I. The allegations in the first and second paragraph in the plaintiff's complaint, and the whole thereof.

II. The said defendant has no information upon the facts contained in the third subdivision of the complaint herein, and therefore denies that the said William Craig and his wife, Isabel Craig, continued to reside upon or cultivate the land described in the second subdivision of said complaint and to perform any or all of the requirements and provisions of the act of Congress referred to therein, or that prior to his death the said William Craig fully complied or in any way complied with the provisions of the act of Congress referred to therein, or that they were informed or received any information from the officers of the land office named therein that they had fulfilled all of the requirements or any of the requirements of the said act of Congress, and that there was nothing further for them, the said William Craig and the said Isabel Craig, to do in order to perfect their title to the land described in the complaint.

III. Defendant admits the allegations contained in the fourth subdivision of the plaintiff's complaint.

IV. The defendant denies that the said William Craig and Isabel Craig acquired and perfected their title to the tract of land described in said complaint, as set forth in the fifth paragraph thereof, by his compliance with all or any of the provisions of the statute referred to therein, or
28 by the terms of the said treaty with the Indians referred to in said paragraph five.

V. The defendant has no information in relation to the facts contained in the sixth paragraph of the plaintiff's complaint, and he therefore denies

that the said William Craig and Isabel Craig, by proper deed of conveyance, or by any deed of conveyance, conveyed the land described therein to the said Samuel Phinney, named therein, or that the said Samuel Phinney ever went into possession of said premises under said deed or continued to occupy and cultivate the said land as set forth in said paragraph six of the complaint herein, or that the said Samuel Phinney by deed of conveyance conveyed his right, title, and interest to an undivided one-half of the said tract of land, or any interest therein, to the said William A. Caldwell, the plaintiff in this action, or that the said plaintiff, William A. Caldwell, on the 9th day of March, A. D. 1891, in common with the said Phinney, went into possession of said tract of land, or at all.

VI. Defendant admits each and every allegation contained in the seventh paragraph of plaintiff's complaint.

VI. Defendant denies that he claims the control and possession of the land and premises described in said complaint without any right or title, or in any other manner, except as herein set forth in this answer.

Further answering the plaintiff's complaint filed herein, the defendant alleges:

I. That he now has and since prior to the 16th day of September, A. D. 1893, has been the duly appointed, qualified, and acting United States Indian agent for the Nez Perce Indians in Idaho, and as such Indian agent has exercised only such authority over the land described in said complaints as conferred by law for the government of the country included within the Nez Perce Indian Reservation in Idaho.

II. That the land described in the complaint herein is the prop-
29 erty of the United States and the same is included within and is now a portion of the Nez Perce Indian Reservation in Idaho, and that the undivided one-half interest therein claimed by the plaintiff now is, and at the time of the commencement of the suit herein was, of a greater value than the sum of two thousand dollars, and that the said land described in said complaint is the particular tract of land referred to in article ten of the treaty proclaimed by the President of the United States April 29, 1859, between the United States of America and the Nez Perce Indians, and that the said tract of land and the whole thereof was afterwards included in and made a part of the Nez Perce Indian Reservation in Idaho by the provisions of the treaty concluded August 13, 1868, between the United States and the Nez Perce tribe of Indians, which said treaty was proclaimed by the President on the 24th day of February, 1869; and that said land described in said complaint and the whole thereof now is, and ever since said 13th day of August, 1868, has been, a portion of and included within the reservation provided for in said last-named treaty.

III. That on the 16th day of September, A. D. 1893, and while defendant was acting as Indian agent aforesaid, he was instructed by the United States Commissioner of Indian Affairs at Washington, D. C., to move the plaintiff, William A. Caldwell, from the land in question, to wit, from the land described in the complaint and from the Nez Perce Indian Reservation in Idaho, which said direction from the United States Commissioner of Indian Affairs aforesaid was in compliance with an order theretofore issued by the Secretary of the Interior Department at Wash-

ington; that a copy of the said instructions from the United States Commissioner of Indian Affairs to defendant is hereunto annexed, marked Exhibit A, and made a part hereof.

IV. That in pursuance of the direction contained in the aforesaid official letter from the United States Commissioner of Indian Affairs, the defendant, on the 30th day of September, 1893, served upon the plaintiff the following notice:

30 "NEZ PERCE INDIAN AGENCY, IDAHO,
"*September 30th*, 1893.

"WILLIAM A. CALDWELL, Esq'r,
"*Lewiston, Idaho.*

"SIR: You are hereby notified that you must remove from this reservation, together with your family and all personal effects, on or before November 1st, 1893.

"Respectfully,
"(Signed) JOSEPH ROBINSON,
"*United States Indian Agent.*"

V. Defendant further alleges that the said William Craig and Isabel Craig failed to comply with the provisions of the act of Congress, approved on the 14th day of February, 1853, entitled "An act to amend an act entitled an act to create the office of surveyor-general of the public lands in Oregon and to provide for the survey and make donations to the settlers of the public lands, and amendments thereto," and that the record of said donation claim is fully set forth in official letter, dated Washington, December 9, 1887, from the Commissioner of Indian Affairs at Washington to the Acting Commissioner of the General Land Office, a copy of which official letter is hereto annexed, marked Exhibit B, and made a part hereof; and as the same further appears from an official letter from the Acting Commissioner of Indian Affairs at Washington to the Secretary of the Interior Department, dated October 8, 1892, a copy of which is hereunto annexed, marked Exhibit C, and made a part hereof; and that the said William Craig and the said Isabel Craig did not do or perform any act for the acquirement of title to said land except as set forth in said Exhibits B & C.

VI. Defendant further alleges that at the time of the alleged settlement of the said William Craig and the said Isabel Craig upon the land described in plaintiff's complaint, the said land was not subject to donation entry under the provisions of the aforesaid act of Congress, approved on the 14th day of February, 1853, and the amendments thereto, for the reason that the Indian title thereto had not at the time of said
31 alleged settlement been extinguished, but that the same was still outstanding and that the occupancy title thereto was outstanding and existed in the Nez Perce tribe of Indians at the time of the alleged settlement of said William Craig and the said Isabel Craig on the land described in said complaint.

Defendant thereofore prays that the injunction heretofore issued herein and now pending may be dissolved, that the suit may be dismissed, and for his costs herein.

FREMONT WOOD,
United States Attorney for Idaho, Attorney and of Counsel for Defendant.

I, Fremont Wood, attorney for the defendant above named, do hereby certify that I consider the foregoing answer well founded in point of law.

FREMONT WOOD,
Attorney for Defendant.

UNITED STATES OF AMERICA,
District of Idaho, ss:

FREMONT WOOD, being first duly sworn, deposes and says that he is attorney for the defendant, Joseph Robinson, above named; that he has read the foregoing answer, and knows the contents thereof; that the same is true of his own knowledge except as to matters therein stated to be on his information or belief, and as to those matters that he believes it to be true; that the reason this answer is not verified by the defendant is the fact that he is absent from the county where deponent resides.

Deponent further says that his information is based upon an examination of the official records furnished through the regular channel of the Interior Departmen' at Wa'hington, so far as they pertain to matters set forth in said answer.

FREMONT WOOD.

Subscribed and sworn to before me this 16th day of December, 1893.

A. L. RICHARDSON,
Clerk of United States Circu'i Court.

32 EXHIBIT A.

UNITED STATES INDIAN SERVICE,
Washington, September 16th, 1893.

JOSEPH ROBINSON, Esq.,
U. S. Indian Agent, Nez Perce Indian Agency, Idaho:

SIR: Under the date of July 15th, 1892, your predecessor, Warren D. Robbins, reported that one William Caldwell, a white man, who sometime previous to that had been ordered off the Nez Perce Reservation, and whose removal had been affected by him, had again returned to the reservation, together with his family, and was residing upon and occupying the piece of land known as the "old Craig" of "Phinney claim," which lies contiguous to the land from which he had previously removed. The late agent also stated in his report that said Caldwell claimed to occupy the land upon which he was residing by virtue of a quitclaim deed of an Indian, and referred him to the county records for evidance respecting the same, and that said Caldwell was the owber of some 600 head of stock, which ranged and fed upon the reservation, for w'ich he paid the Indians no grazing tax; which stock, however, was held in the name of Fitch Phinney, an Indian.

About the same time, under date of July 20th, 1892, U. S. Special Agent J. A. Leonard reported to this office that said Caldwell never had been in fact removed from said reservation (as had been previously reported by Agent Robbins); that said Caldwell had gone to Lewiston to live during the winter of 1890–91 for the purpose of sending his children to school, but that he left his personal property on the reservation and returned in the spring of 1891, and had lived thereon ever since, engaged in farming and stock raising.

Based upon Special Agent Leonard's report, on August 2, 1892, this office telegraphed Agent Robbins as follows:

"The order for the removal of Caldwell and Cox from the res-
33 ervation must be enforced without unnecessary delay. Unless these orders are promptly enforced you will be summarily dealt with."

On the following day, August 3, 1892, this office directed Agent Robbins, by letter, to remove all white intruders from the reservation, laying particular stress upon the removal of said Caldwell. Your attention is respectfully invited to said office letter, which, it is presumed, will be found among the files of your office.

It appears from subsequent proceedings in the matter that Agent Robbins took some steps, under said office instructions of August 3, 1892, looking to the removal of said Caldwell from the reservation. It also appears that in order to prevent his removal from the reservation said Caldwell obtained a temporary injunction against Agent Robbins, restraining him from removing him (Caldwell) from the reservation.

The matter respecting the temporary order of injunction was reported to this office by agent Robbins, under the date of September 28, 1892. With his said letter he enclosed a copy of the complaint of said Caldwell, filed in the court of the second judicial district of the State of Idaho, for the county of Nez Perce, in which he claimed he had a right to the land in question by virtue of purchase, and that if he should be removed from said land, as threatened, he would suffer great and irreparable injury and damage; that the defendant, Robbins, was, as he had been informed, insolven', and a judgment against him for damages would be unavailing and worthless, etc., and asking the court to restrain said Robbins by injunction from removing him (the said Caldwell) from the land in question, or in any way interfering with his quiet and peaceable possession thereof. With said letter was also enclosed a copy of the order of said court restraining said Robbins from removing the said Caldwell from the land in question pending the investigation of the complaint above mentioned, and a copy of the summons to Agent Robbins to appear and defend the complaint.

34 Under date of October 8, 1892, this office reported the facts to the Secretary of the Interior, with which was transmitted him the papers above referred to and recommended that said papers be transmitted to the Department of Justice with the request that the United States district attorney for the district of Idaho be instructed to appear in the defense of said suit, and to take proper steps to have the same removed to the United States district court. This letter gives the status of the land in question—the so-called "William Craig donation claim." For your information in the premises, a copy of the same is enclosed herewith.

Under date of October 1, 1892, Agent Robbins transmitted to this office copy of an agreement and stipulation entered into between himself and James W. Reid, attorney for said Caldwell, by the terms of which the defendant, Robbins, was given until November 1, 1892, to plead or demur to the complaint filed by said Caldwell. A copy of Agent Robbins' letter and of said agreement were transmitted to the Secretary of the Interior on October 17th, 1892, to be considered in connection with

office letter of October 8th, and recommendation made that the same be forwarded to the Attorney-General to be used in connection with the papers already forwarded him in the case.

On January 16th, 1893, Agent Robbins further reported this office that by the court'sy of opposing counsel an agreement had been entered into by which he was granted a further extension of time within which to appear and answer the complaint of said Caldwell; that *that* by the terms of said agreement he was given until the first day of the succeeding session of the district court, which was set to convene on February 15, 1893, within which to plead to said complaint. Agent Robbins also requested that he be furnished with such evidence from the records and files of this office as would be of use to him in answering and defending said complaint.

In response to this request this office, on January 25, 1893,
35 addressed a letter to the Secretary of the Interior, inviting his attention to the correspondence in the case, and forwarded therewith a copy of said office letter of October 8, 1892, a copy of office letter of December 9, 1887, addressed to the Commissioner of the General Land Office, giving the status of the said "William Craig donation claim," and a copy of a letter of the Commissioner of the General Land Office, dated December 17, 1887, addressed to R. J. Monroe, esqr., Lewiston, Idaho, attorney in the matter of the said "William Craig donation claim" (informally obtained by this office), and recommended that they be transmitted to the Department of Justice, with the request that the Department send them to the United States district attorney for the district of Idaho and instruct him to appear for and on behalf of Agent Robbins in the defense of said complaint of William Caldwell. It is presumed these papers are now on file in the office of the said United States district attorney, and could be obtained at any time if needed.

This office on April 27, 1893, received through the Acting Attorney-General, by reference from the Interior Department, a telegram from Hon. Fremont Wood, United States attorney for the district of Idaho, of date April 7, 1893, as follows:

"Please advise Commissioner of Indian Affairs that State court has sustained by demurrer and disallowed temporary injunction in case of Caldwell against Robbins, Nez Perces agent."

On May 19, 1893, this office accordingly directed Agent Robbins to again take immediate steps to remove said William Caldwell from the Nez Perce Reservation, and that in accomplishing this purpose he should follow the instructions given him in said letter of August 3, 1892, relating to the matter.

Under date of June 17, 1893, Agent Robbins forwarded to this office a certified copy of an order, issued by the district court of the second judicial district of the State of Idaho, in and for Nez Perce County, directing that the injunction theretofore granted in the case should be continued during the pendency of the proceedings, and giving the plaintiff leave until August 1, 1893, to file an amended complaint.

36 Said order (after the title of the case) is as follows:

"In this cause, on the application of Jas. W. Reid, attorney for plaintiff, it is ordered by the court that plaintiff have leave until August 1, 1893, to file an amended complaint. It is further ordered that in pur-

suance of the stipulation of the parties heretofore filed, the injunction heretofore granted be continued during the pendency of the proceedings.

" Dated June 10, 1893.

" (Signed) W. G. PIPER,
"District Judge."

This office on July 31, 1893, received by reference from the Interior Department a communication from the Attorney-General dated July 28, 1893, with which he forwards a letter from Hon. Fremont Wood, U. S. district attorney for Idaho, of date July 16, 1893. District Attorney Wood briefly reviews the case of Caldwell vs. Robins and states that Robbins has informed him that he (Robbins) has again been enjoined from removing Caldwell from the reservation. Mr. Wood further states that he has been informed that a new agent has been appointed for the Nez Perce Indians, who will shortly supersede Mr. Robbins; that as the action is a personal one against W. D. Robbins and not against him as an Indian agent, the injunction can have no binding effect upon his successor. He accordingly recommends that the Interior Department (as soon as Agent Robbins' successor qualifies) renew the instructions heretofore given for the removal of said Caldwell from the lands in question and from the Nez Perce Reservation. The district attorney also recommends that Mr. Robbins' successor be instructed in case of the commencement of any proceedings looking to the restraining of him from removing said Caldwell from the reservation, to at once communicate with him (the district attorney) instead of waiting for the matter to go through the Department here. This last recommendation is made because of the limited time given a defendant to appear and answer such complaints.

38 The Attorney-General concurs in the recommendation of the district attorney, and requests that the instructions suggested by him relative to the removal of said Caldwell, etc., be given.

For your further information, I enclose you herewith a copy of said letter of the Attorney-General and of the district attorney, Wood.

Agreeably with the recommendation of the U. S. district attorney for the district of Idaho and of the Attorney-General of the United States, you are hereby directed to remove said William Caldwell (or William A. Caldwell, as he is known in the court proceedings) from the land in question and from the Nez Perce Indian Reservation. In accomplishing the removal of said Caldwell you are to follow the instructions given your predecessor in office letter of August 3, 1892, which letter it is presumed is on file at the agency.

In case any legal steps are taken by Caldwell to restrain you from removing him from said lands and from the reservation, you should at once communicate with the United States district attorney for the district of Idaho, and ask his assistance in the matter, and at the same time report all the facts in the case to this office.

This matter should receive your immediate attention, and the said Caldwell should be removed from the reservation at the earliest practicable date.

Full report of your actions hereinder should be made to this office from time to time, or when you have accomplished the permanent removal of said Caldwell, according as the circumstances in the case seem to indicate.

Very respectfully,

D. M. BROWNING, *Commissioner.*

38 EXHIBIT B.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, December 9, 1887.

HON. S. M. STOCK'LAGER,
Acting Commissioner of General Land Office.

SIR: I have received your letter of the 26th ultimo, transmitting copy of a communication of the 11th idem, from R. J. Monroe, of Lewiston, Idaho Territory, making inquiries in regard to the status of the William Craig donation claim within the Nez Perce Indian Reservation, and requesting to be informed if there is any objection shown by the records and files of this office to the survey and patenting of said claim.

In reply I have to say that it appears from the files of this office that the claim of William Craig to the tract of land in question arose about the time the treaty of June 11, 1855 (12 Stats., 960), with the Nez Perce Indians was concluded, and is recognized to a certain extent by the tenth article thereof, by which it was agreed in consideration of his having uniformly shown himself their friend, "That the tract of land now occupied by William Craig, and described in his notice to the register and receiver of the land office of the Territory of Washington, on the fourth day of June last, shall not be considered a part of the reservation provided in this treaty, except that it shall be subject in common with the lands of the reservation to the operation of the intercourse act."

Under date of July 20th, 1860, this office received a communication from your bureau in reply to a letter of the 17th idem on the subject of the Craig claim, in which the following language is used:

39 "We do not regard the treaty provision as conferring title or authorizing the issue of a patent to Mr. Craig, but merely as granting a right of occupancy so long as the Indian title to the reservation remains unextinguished, and to that extent as an abnegation of favor of the sovereign authority of the Indian usufruct."

It is true that the above was written with reference only to the title conferred by the tenth article of said treaty of 1855, and without any intention of passing on the right of the claimant under the act approved September 27th, 1850 (9 Stats., 496), creating the office of surveyor-general of the public lands in Oregon, and to make donations to settlers on the public lands.

The same opinion was held by Congress and was so expressed in the preamble to an act approved March 3, 1873 (17 Stats., 627), where the said tenth article of the said treaty was construed to give William Craig only a person' right to occupy the land therein mentioned, and declared that right to have ceased at his death.

The said act authorized the Commissioner of Indian Affairs to purchase from the legal representative of the said Craig the improvements on the land in question, at a price fixed thereby, which price was tendered to and refused by them, on the ground that the said land was claimed under the donation act of September 27th, 1850, and that William Craig, or his legal representatives, had a perfect right to a patent, independent of the provisions *of the provisions* of the treaty.

Under date of August 21st, 1873, this office received a letter from the Honorable Acting Secretary of the Interior, B. R. Cowen, in reply to a report relative to intruders on the Nez Perce Reservation, in which he said:

"In relation to the matter of Samuel Phinney, who appears as purchaser of the Craig claim, this Department would suggest that the agent first ascertain what Pinney's legal rights in the case are, and if he is found to be the bona fide owner of said claim, to tender to him the amount contemplated in the act of Congress (act approved March 3, 1873, 17
40 Stats., 627), and upon his refusal to receive or settle upon the terms set forth to remove him from the reservation."

A copy of this authority was sent to the agent, with instruction to take the necessary action to put the same in execution without delay.

The execution of the above order was suspended by the Department December 17, 1873, at the request of John Hailey, who was then delegate in Congress from Idaho Territory, for sixty days, which was afterwards extended to ninety days, that Phinney might offer evidence in support of his claim under the said donation act of 1850.

The evidence submitted, so far as shown by the records of this office, by Mr. Phinney, in my opinion, is deficient in two very material points: First. No affidavit seems to have been made by William Craig, as requires by the twe'fth section of the act of September 27, 1850 (9 Stats., 496), which provides that the claimants shall make affidavit: "The land claimed by them is for their own use and cultivation; that they are not ac'ing either directly or indirectly as agent for or in the employment of others in making said claims, and that they have made no sale or transfer, or any agreement for any sale, transfer, or alienation of the same, or by which the said land shall enure to the benefit of another person," etc.

Second. No certificate of the surveyor-general, or the register and receiver, appears to have been made setting forth the facts in the case and specifying the land to which the party is entitled to, as provided by the seventh section of the said act, according to which the patent must issue.

The fact that William Craig filed his notice in 1855 and allowed the matter to rest until 1869, when he died without making any attempt to perfect his claim under the donation act, is evidence that he intended to abandon his claim to the benefits of said act and to accept such title as was given him be the treaty, which has been construed to be only the personal right of occupancy.

41 Mr. Cr'ig's failure to comply with the statute in these particulars affects the title of his wife and all others who claim through him under the donation act.

Even had the said Craig followed up his notice to the register and receiver with the proper affidavit and secured the certificate of that officer, as required by the statute, it is a question whether the land he claims would be subject to donation under the law from the fact that at the time he settled on the same it was land to which the Indian title was still outstanding, and which was not extinguished until the conclusion of the said treaty of June 11, 1855. Upon the question whether a white settler may rightfully take possession of lands occupied by Indians in Oregon and oust them prior to the extinguishment of the occupancy title by the United States, the Honorable Caleb Cushing, then Atyorney-General, says:

"This idea is too absurd to admit of reasoned reply. Suffice it to say that a white settler has the same right thus to oust the Indians as he has to oust white men, and no more; that is, to substitute robbery for purchase, and violence for law." (Opinions of Attorneys-General, Vol. VII, page 299.)

That the occupancy title to the land in question was still outstanding and existed in the Nez Perce Indians at the time the said Craig settled on this claim, and that the United States recognized such a title in them, is shown by the first article of the said treaty of 1855, by which the Nez Perce Indians "cede, relinquish, and convey to the United States, for a valuable consideration, all their right and title and interest in and to the country occupied or claimed by them," and gives the boundaries of the same, and within which boundaries was the land occupied by the said Craig.

In view of the construction placed on the said tenth article of the treaty of 1855 by Congress; the fact that from the papers in the case William Craig appears to have abandoned his claim under the "donation act," and that under the decision of the United States Supreme Court in
42 Vance vs. Burbank (101 U. S., 514), his abandonment operates against all claiming through him; and the fact that the Indian title to said land had not been extinguished when the said Craig settled thereon; and the further fact that the United States appearing to recognize no right in the said William Craig, under the donation act, included the land embraced in his claim in the reservation created for the Nez Perce Indians by the treaty of August 13, 1868 (15 Stats., 693), this office is of the opinion that the patent should not be issued to Phinney.

Very respectfully,

J. D. C. ATKINS, *Commissioner.*

43 EXHIBIT C.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, October 8, 1892.

The Honorable the SECRETARY OF THE INTERIOR.

SIR: Referring to your letter of October 4, 1889, authorizing the removal from the Nez Perce Reservation, Idaho, of one William A. Caldwell, who claims to be entitled to remain thereon by virtue of a purchase of an undivided one-half interest in 640 acres of land on that reservation known as the William Craig donation claim, I have the honor to transmit herewith copy of a letter of September 28, 1892, from Warren D. Robbins, United States Indian agent for the Nez Perce Agency, enclosing complaint of said William A. Caldwell, filed in the court of the second judicial district of the State of Idaho, for the county of Nez Perce, claiming that he has a right to the land in question by purchase, and that if he is removed from said land, as threatened, he will suffer great and irreparable injury and damage; and that the defendant Robbin is, as he is informed and believes, insolvent, and a judgment against him for damages would be unavailing and worthless, etc., and asking the court to restrain said Robbins by injunction from removing him from the land in question or in any way interfering or intermeddling with his quiet and peaceable

possession thereof. Also an order of said court restraining said Robbins from removing Caldwell pending the investigation of the complaint as above set forth, and the summons to Mr. Robbins to appear and defend the complaint.

Notwithstanding the fact that your authority for the removing of this man Caldwell was given over three years ago, and the further fact
44 that many efforts have been made by this office to have him removed in accordance therewith, it seems that Caldwell has never been actually removed from the reservation.

A part of the land which he claims has been allotted by Miss Fletcher to certain members of the Nez Perce tribe of Indians, being descendants and heirs of William Craig, the original claimant to the land.

This Department has never recognized any right in the purchasers from Craig to the land in question. The records of this office show that just prior to the conclusion of the treaty of June 11, 1855 (12 Stats., 960), with the Nez Perce Indians, William Craig, who had married a member of that tribe, filed his notification with the register and receiver of the land office of Washington Territory for the settlement of 640 acres under the donation act of September 27, 1850 (9 Stats., 496). The treaty of 1855, above referred to, provides in the 10th article thereof that, in consideration of his having uniformly shown himself the freind of the Indians, "the tract of land now occupied by William Craig, described in his notice to the register and receiver of the land office of the Territory of Washington on the 4th day of June last, shall not be considered a part of the reservation provided for in this treaty, except that it shall be subject, in common with the lands of the reservation, to the operations of the intercourse act."

Mr. Craig abandoned his donation entry, taking no further steps to complete his right under the act of 1850, above set out, relying, it is presumed, upon the personal right of occupancy granted by the 10th article of the treaty above set forth.

The Commissioner of the General Land Office, in a letter of July 17th, 1860, to this office, said:

"We do not regard the treaty provision as confer'ing or authorizing the is'ue of a patent to Mr. Craig, but merely as granting a right of occupancy so long as the Indian title to the reservation remains unextinguished, and to that extent is an abnegation in favor of the sovereign authority of the Indian usufruct."

45 Congress has expressed a similar opinion in the preamble to the act approved March 3, 1873 (17 Stats., 627), wherein the said 10th article of the treaty of 1855 was construed to give William Craig only a person' right to occupy the land therein described, and declared that right to have ceased at his death.

The construction, therefore, that has always been placed on the 10th article of the treaty of 1855, both by the General Land Office and Congress, as well as by this office, has been uniformly that no greater right was granted Mr. Craig in the lands referred to therein that the right to occupy and to use it during his lifetime. No sale, therefore, of any part of this land by Mr. Craig could confer title on the grantee, and Mr. Caldwell could not in fact acquire any right to the land that would entitle him to remain on the reservation.

The suit brought by Mr. Caldwell necessarily involves the construction of the 10th article of the treaty of 1855, upon which it must stand or fall, the records of the General Land Office showing clearly that no donation entry of the land had been perfected by Mr. Craig, if, indeed, the lands were subject to such entry, the Indian title at the time not having been extinguished; and I therefore have the honor to recommend that the papers in the case be transmitted to the Department of Justice, with request that the United States district attorney for the district of Idaho be instructed to appear in the defense of the suit and take the proper steps to have the same removed to the United States district court, where, I am of the opinion, the same should have been brought.

Inasmuch as some time has already elapsed since the papers in the case have been served on the agent, I would suggest the advisibility of speedy action, in order to prevent judgment being given against him by default.

Very respectfully,

R. V. BELT,
Acting Commissioner.

46 (Endorsed:) United States circuit court, northern division, district of Idaho. William A. Caldwell vs. Joseph Robinson. Answer. Filed Dec. 16th, 1893. A. L. Richardson, clerk. , attorney for defendant.

47 *Notice of filing of transcript.*

In the United States circuit court of the ninth circuit within and for the northern division of the district of Idaho.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT.
} Notice of filing of transcript.

To William A. Caldwell, plaintiff above named, and to James W. Reid, Esqr., his Attorney:

You*r*, and each of you, will please take notice that the defendant above named has heretofore, to wit, on the 27th day of November, 1893, filed in the above-entitled court a transcript of the record in the above-entitled cause, which said cause was, by order of the district judge of the second judicial district, transferred from said district court for Nez Perce County, second judicial district, aforesaid, to the aforesaid United States circuit court on the 3rd day of November, 1893.

Very respectfully,

FREMONT WOOD,
Attorney of the United States for the District of Idaho,
Attorney for said Defendant.

I hereby accept service of the foregoing notice, by copy, this 2nd day of Dec., 1893.

JAS. W. REID,
Attorney for Plaintiff.

48 (Endorsed:) United States circuit court, ninth circuit, within and for the northern division of the district of Idaho. William

A. Caldwell, plaintiff, vs. Joseph Robinson, defendant. Notice of filing of transcript. Filed Dec. 16th, 1893. A. L. Richardson, clerk. , attorney of the United States for the district of Idaho, attorney for said defendant.

49 *Stipulation.*

In the circuit court of the United States within and for the district of Idaho, central division.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT.

It is hereby stipulated and agreed that the above-entitled cause now pending in the circuit court of the northern division of the district of Idaho be, and the same is hereby, transferred to this court for trial by consent of the parties hereto, and after trial thereof it is stipulated that either party shall have sixty days after notice of decision in which to prepare and serve his bill of exceptions.

JAS. W. REID,
Attorney and of Counsel for Pltf.
FREMONT WOOD,
Attorney for and of Counsel for Defendant.

(Endorsed:) No. 89. Wm. A. Caldwell vs. Joseph Robinson. Stipulation. Filed Dec. 30th, 1893. A. L. Richardson, clerk.

50 *Facts stipulated on trial of action.*

In the circuit court of the United States within and for the northern division of the district of Idaho.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT.

In the above-entitled cause the following facts are hereby stipulated and agreed upon by and between the parties on trial of action on this the 29th day of December, 1893, to wit:

I. That one William Craig was a native born citizen of the United States; that he was born in Greenbrier County, in the State of Virginia, in the year 1807; that on the 6th day of July, 1838, the said William Craig intermarried with Isabel Craig, an Indian woman, and belonging to the Nez Perce tribe of Indians; that the said Wm. Craig and his wife, Isabel Craig, on the 15th day of September, 1846, located and settled upon the following described tract of land: Beginning at a stake thirty yards north of Lapwai Creek, thence west two miles to a pile of rocks, thence south half a mile to a stake, thence east two miles to a cottonwood tree, thence north half a mile to the place of beginning, containing 640 acres, which said tract of land was a part of the public domain of the United States, lying in the Indian country in the then

Territory of Oregon, but now in the State of Idaho, and included within the bounds of the present Nez Perce Indian Reservation.

II. That the said William Craig and his wife, Isabel Craig, continued to reside upon, occupy, and cultivate the said tract of land from the 15th day of September, 1846, until the 4th day of June, 1855, when the said William Craig, his wife then being alive and residing with him upon the same tract of land, filed his notification to the register and receiver
51 of the land office of the then Washington Territory, situated at Ol'mpia, for the settlement of the said land, which had not yet been surveyed, in the following words and figures, to wit:

Pursuant to the act of Congress approved on the 14th day of February, 1853, entitled "An act to amend and act entitled an act to create the office of surveyor-general of public lands in Oregon, and to provide for the survey and make donations to the settlers of the public lands," and amendments thereto, I, William Craig, of Wallawalla County, in the Territory of Washington, hereby give notice of my claim to donation of six hundred and forty acres of land, particularly bounded and described as follows: Beginning at a stake thirty yards north of Lapwai Creek; thence west two miles to a pile of rocks; thence south half a mile to a stake; thence east two miles to a cottonwood tree; thence north half a mile to the place of beginning.

Signed, William Craig, and filed the same in the office of the register and receiver of said land office June 19th, 1855.

III. That said William Craig and his wife, Isabel Craig, continued to reside upon and cultivate said land from the 15th day of December, 1846, until his death, in the year 1869.

That on the 4th day of June, 1855, said William Craig and Isabel Craig made proof of their said settlement and cultivation of said land before Henri M. Chase, clerk of the U. S. district court for Clark County, Washington Territory.

No.

Henri M. Chase, of Wallawalla County, in the Territory of Washington, being first duly sworn, says that he is in no way interested in the tract of land claimed as a donation by William Craig and particularly described in the annexed notification of the register and receiver of Washington Territory; that he is personally acquainted with said William Craig, and knows that he has personally resided upon and cultivated said tract of land continuously from the 15th day of October, 1849, to the 4th day of June, A. D. 1855.

52 HENRI M. CHASE.

Subscribed and sworn to before me this 4th day of June, A. D. 1855.

HENRY R. CRSOBIE,
Clerk U. S. Dist. Court, Clark Co., Washington Territory.

No.

William C. McKay, of Wasco County, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract of land claimed as a donation by Wm. Craig and particularly described to the annexed notification to the register and receiver of Washington Territory; that he is personally acquainted with said William Craig, and knows that

he has personally resided upon and cultivated said tract of land continuously from the 10th day of June, 1849, to the 4th day of June, A. D. 1855.

WM. C. MCKAY.

Subscribed and sworn to before me this 4th day of June, 1855.

HENRY R. CROSBIE,
Clerk U. S. Dist. Court, Clark Co., Washington Territory.

No.

Louis Raboin, of Wallawalla County, in the Territory of Washington, being first duly sworn, says that he is personally acquainted with William Craig, the person who claims a donation right to the tract of land described in the annexed notification to the register and receiver of said Territory and Isabel Craig, his wife, and that he has known them to live together as man and wife from the 6th day of July, 1838, to the 4th day of June, A. D. 1855, and that they are and were reputed by their neighbors as such during said period.

his
LOUIS x RABOIN.
mark.

Witness: A. HIESENTHAL.

Subscribed and sworn to before me this 4th day of June, 1855.

HENRY R. CROSBIE,
Clerk U. S. Dist. Court, Clark Co., W. T.

53 *Affidavit of settler on unsurveyed lands, claiming under the 4th section of act of 27th September, 1850, and the amendments thereto.*

William Craig, of Wallawalla County, in the Territory of Washington, being first duly sworn, says that he is a white settler on public lands in said Territory; that he arrived in Oregon on the 25th day of July, A. D. 1829; that he is a native-born citizen of the United States; that he was born in Greenbrier County, in the State of Virginia, in the year of 1807; that he has personally resided upon and cultivated that part of the public lands, in the Territory aforesaid, particularly described in the annexed notification to the register and receiver of said Territory, continuously from the 15th day of September, A. D. 1846, to the 4th day of June, A. D. 1855. And he further says that he is intermarried with Isabel Craig, his wife, and that he was legally married to her on the 6th day of July, A. D. 1838, in Missouri Territory, and that they have issue, Joseph, born Sept. 10, 1840; Matha, born Feb. 20th, 1842; Adeline, born May 5th, 1845; Mary, born Aug. 24th, 1850; Anna, born June 12th, 1853.

WILLIAM CRAIG.

Subscribed and sworn to before me this 4th day of June, A. D. 1855.

HENRY R. CROSBIE,
Clerk U. S. Dist. Court, Clark Co., Wash. Ter.

No.

Territory of Washington.—Notification.

To the Register and Receiver of Washington Territory of Settlement on Public Land not yet Surveyed:

Pursuant to the act of Congress approved on the 14th day of February, 1853, entitled "An act to amend and act entitled an act to create the office

of surveyor-general of public lands in Oregon, and to provide for the survey and make donations to settlers of the public lands, and amendments thereto," I, William Craig, of Wallawalla County, in the Territory of Washington, hereby give notice of my claim to donation of 640 acres
54 of land, particularly bounded and described as follows: Beginning at a stake 30 yards north of Lapwai Creek; thence west two miles to a pile of rocks; thence south half a mile to a stake; thence east two miles to a cottonwood tree; thence north half a mile to the place of beginning.

WILLIAM CRAIG.

Which said proof was filed in the U. S. land office at Olympia, Washington Ty., June 19th, 1855.

(Endorsed on back:) Not. No. 1271. William Craig. Filed June 19th, 1855.

IV. That after the making of the proof hereinbefore set out, the said William Craig and wife received a letter from the officers of the land office at Olympia, Washington, to which office their proof had been sent, wherein they notified said Craig that his filing and proof were complete, and that he had as complete title to said land as could be acquired prior to issuing of patent; that patent could not issue until the Government survey had been extended over the country.

V. That in a treaty made between the Government of the United States and the Nez Perce Indians on June 11th, 1855, as will more fully appear in 12 Statutes of the United States, page 957, by article 10 of said treaty it was agreed, in consideration of the said Craig having uniformly shown himself a friend to the Nez Perce Indians, "That the tract of land now occupied by William Craig and described in his notice to the register and receiver of the land office of the Territory of Washington on the 4th day of June last shall not be considered a part of the reservation provided for in this treaty, except that it shall be subject in common with the lands of the reservation to the operation of the intercourse act."

VI. That no general survey of the land in question was made by the Government until the year 1870, when one D. P. Thompson, a deputy surveyor of the U. S. Government, was engaged in making and
55 extending the first surveys of the Government over township 35, N. of R. 3 W., Boise meridian, in which is included the land in controversy, and was at the same time surveying through surrounding townships. A certified copy of his said survey, made at said time, is hereto attached, as a part of the facts stipulated hereto, and marked Ex. A.

At the time said D. P. Thompson made said surveys one, Jos. K. Vincent, who was the tenant and lessee of the heirs of the said William Craig, and of the said Samuel Phinney, employed the said D. P. Thompson to survey the said donation claim of the said William Craig, and it is hereby stipulated and agreed that the facts stated in the affidavit of the said Jos. K. Vincent are true as follows:

TERRITORY OF IDAHO,
County of Nez Perce, ss:

Joseph K. Vincent, being first duly sworn, on oath says: That he was well acquainted with William Craig and Isabel Craig, his wife, and the

land embraced in their donation claim, situated in township 35 N., R. 3 W., B. M., within the boundaries of the Nez Perce Indian Reservation. That during the year of 1870 affiant resided on said land as the tenant and agent of Samuel Phinney, claimant of said land, under deed from the Craig heirs. That during the summer of 1870, D. P. Thompson, a United States surveyor, employed in surveying said reservation, at the request and for Mr. Phinney, surveyed the donation claim of William Craig, according to the lines, as claimed by said donation claimant. That affiant paid said D. P. Thompson an amount of about forty or forty one or two dollars in payment of said survey for Samuel Phinney, taking a receipt from said Thompson for the amount paid for said donation survey. That he turned said receipt over to said Phinney, which said Phinney tells him has been lost; that he has at different times seen the plat of said donation claim in the office at the Lapwai Indian Agency, where
57 it is designated on said plat as the Craig donation claim, and is the plat of the same survey for which he paid said D. P. Thompson. That said affiant has been acquainted with said land, as the donation claim of William Craig, since August, 1862.

(Signed) JOSEPH K. VINCENT.

Subscribed and sworn to before me, at my office in the city of Lewiston, Nez Perce County, Idaho Territory, this 6th day of May, 1890.

[SEAL.] RICHARD J. MONROE,
Notary Public.

That the survey was made as aforesaid at that time, and the plat thereof put on file at the office of the Indian agent at Lapwai, Idaho. That during the month of October or November, 1887, R. J. Monroe, esqr., attorney for the said Samuel Phinney, and the said Craig heirs, addressed a letter to the Hon. Commissioner of the General Land Office at Washington, D. C., making inquiries in regard to the status of the Craig donation claim, in reply to which said letter the Commissioner of the Land Office stated that the proof of the said William Craig, copies of which are hereinbefore set out in this stipulation, was deficient for the reason that the said proof was not accompanied by the affidavit required by section 12 of the said donation act, approved Sept. 27th, 1850.

2nd. That no certificate of the surveyor-general, or the register and receiver of the local land office appears to have been made, setting forth the facts in the case, and specifying the land to which the party is entitled, as is prescribed by the 7th section of said donation act. On receipt of this last said letter, the said Samuel Phinney, through his attorney, on Dec. 20th, 1890, made application to the suveyor-general of Idaho for an order of survey of said land on March 14th, 1890, said surveyor-general ruled that he had no authority to issue said order, for the reason that said lands were included within the lands of the said Nez Perce
57 Indian Reservation. On receipt of this letter from the surveyor-general of Idaho, the attorney for the said Phinney and the Craig heirs applied to the Hon. Commissioner of the General Land Office for a patent enclosing said plat and plats of the survey made by the said D. P. Thompson, in 1870, as follows: The affidavit of the said Joseph K. Vincent, hereinbefore set out, and a copy of the plat of the survey, showing

the survey of the donation claim, duly certified by the surveyor-general of Idaho Territory on Dec. 30, 1870, being the same as is hereto attached as Exhibit A.

That the Hon. Commissioner of the Land Office refused to issue the patent on the ground that the treaty previous to June 11th, 1855, conferred no title or authority to issue patent to William Craig and wife, but simply granted a right to occupancy so long as the Indian title to the reservation remained unextinguished, and that Congress in the preamble of an act approved March 3, 1873, 7 Statutes, 677, construed the right of William Craig as a personal right to occupy the land was not mentioned, and that right ceased with his death.

3rd. That no affidavit seems to have been made by William Craig as required by 12th section of the act of September 27th, 1850, 9th Statutes, 496.

4th. That no certificate of the surveyor-general, or the register and receiver, appears to have been made, setting forth the facts in the case as required by the 7th section of said act.

5th. For the reason that said land was not subject to donation entry when Craig made his settlement, because the Indian title had not then been extinguished.

It is further stipulated that the, defendant, Joseph Robinson, now is, and since prior to the first day of September, 1893, has been, qualified and acting U. S. Indian agent of the Nez Perce Indians in Idaho, and that he assumed to exercise control and authority over the land described in the complaint herein as such Indian agent.

58 2nd. That the land described in the complaint is the same land referred to in article 10 of the treaty made June 11th, 1855, between the United States and the Nez Perce tribe of Indians.

3rd. That said land ever since the execution of said treaty has been included within the exterior boundaries of said Indian reservation. That said Indian agent ordered the plaintiff to remove from said land, as Indian agent aforesaid, acting under and by direction of the Commissioner of Indian Affairs and Secretary of Interior.

That on the 14th day of March, 1890, the surveyor-general of Idaho, acting under orders from the Commissioner of the General Land Office at Washington, refused to survey said claim, as a donation claim, on the ground that said land was at the time of the application therefor included in and a part of the Nez Perce Indian Reservation.

That the land described in said complaint, to wit, the undivided one-half interest in said donation claim, now is and at the time of the commencement of the suit herein was of the value of over $2,000 exclusive of interest and costs.

VII. That said William Craig and Isabel Craig, who are now dead, and before their said death, by a proper deed of conveyance in fee simple, on Feb. 13th, 1869, conveyed all their right, title, and interest in and to said land to one Samuel Phinney and Moses H. Rice, said Phinney having intermarried with a daughter of the said William and Isabel Craig, the issue of their said marriage, and subsequently the said Rice conveyed his interest thereto to said Phinney; and that the said Samuel Phinney, under said conveyance, went into the possession of and continued to occupy and cultivate the said land until the 9th day of March, 1891, when the said

Samuel Phinney, by a proper deed of conveyance, conveyed all his right, title, and interest to an undivided one-half interest in the said tract of land to William A. Caldwell, who is the plaintiff in this action.

59 That on the 9th day of March, 1891, in common with the said Samuel Phinney, he went into the possession of the said tract of land and has, with the said Phinney, continued ever since to occupy, cultivate, and use the same.

Dec. 30th, 1893.

JAS. W. REID,
Attorney for and of Counsel Pltf.
FREMONT WOOD,
Attorney for and of Counsel for Defendant.

(Endorsed:) No. 89. William A. Caldwell vs. Joseph Robinson, defendant. Statement of facts agreed on by counsel. Filed Dec. 30th, 1893. A. L. Richardson, clerk.)

60 *Findings of fact and decision of the court.*

In the circuit court of the United States for the central division of the district of Idaho.

WILLIAM A. CALDWELL, PLAINTIFF, *vs.* JOSEPH ROBINSON, DEFENDANT. } Findings of fact and decision of the court.

The above-entitled action came on regularly for hearing, on the motion to dissolve the injunction, on the 29th day of December, 1893, when it was stipulated and agreed, by and between the parties, that the action should be removed from the northern division of the district of Idaho to the central division of the district of Idaho, and should be heard upon its merits upon the statement of facts stipulated and agreed on by and between the respective parties; and the case coming on for hearing and trial upon the merits, and upon the facts stipulated and agreed upon, as appears of record from the stipulation filed in this case on the said 29th day of December, 1893, James W. Reid, esqr., appearing as counsel for plaintiff, and Fremont Wood, esqr., U. S. attorney for the district of Idaho, as counsel for the defendant, and the facts stipulated and agreed on by and between the counsel for the respective parties having been submitted to the court for hearing, and after the argument of the counsel for the respective parties, the case was submitted to the court for consideration and decision; and, after due deliberation therein, the court finds the following as the facts of the case, being the same as were stipulated and agreed on between the respective counsel, to wit:

61 That one William Craig was a native-born citizen of the United States; that he was born in Greenbrier County, in the State of Virginia, in the year 1807; that on the 6th day of July, 1838, the said William Craig intermarried with Isabel Craig, an Indian woman, and belonging to the Nez Perce tribe of Indians; that the said William Craig and his wife, Isabel Craig, on the 15th day of September, 1846, located and sett'ed upon the following described tract of land: Beginning at a stake thrity yards north of Lapwai Creek, thence west two miles to a pile

of rocks, thence south half a mile to a stake, thence east two miles to a cottonwood tree, thence north half a mile to a place of beginning, containing 640 acres, which said tract of land was a part of the public domain of the United States, lying in the Indian country, in the then Territory of Oregon, but now the State of Idaho, and included within the bounds of the present Nez Perce Indian Reservation.

II. That the said William Craig and his wife, Isabel Craig, continued to reside upon, occupy, and cultivate the said tract of land from the 15th day of September, 1846, until the 4th day of June, 1855, when the said William Craig, his wife then being alive and residing upon the same tract of land, filed his notification to the register and receiver of the land office of the then Washington Territory, situated at Olympia, for the settlement of the said land, which had not yet been surveyed, in the following words and figures, to wit:

Pursuant to the act of Congress, approved on the 14th day of February, 1853, entitled "An act to amend an act entitled an act to create the office of surveyor-general of public lands in Oregon, and to provide for the survey and make donations to the settlers of the public lands," and amendments thereto, I, William Craig, of Wallawalla County, in the Territory of Washington, hereby give notice of my claim to the donation of six hundred and forty acres of land particularly bounded and described
62 as follows: Beginning at a stake thirty yards north of Lapwai Creek; thence west two miles to a pile of rocks; thence south half a mile to a stake; thence east two miles to a cot'onwood tree; thence north half a mile to the place of beginning. (Signed) William Craig, and filed the same in the office of the receiver of the said land office, June 19th, 1855.

III. That said William Craig and his wife Isabel Craig, continued to reside upon and cultivate said land from the 15th day of December, 1846, until his death in the year 1869.

That on the fourth day of June, 1855, said William Craig and Isabel Craig made proof of their said settlement and cultivation of said land before Henri M. Chase, clerk of the U. S. district court for Clark County, Washington Territory.

No. .

Henri M. Chase, of Wallawalla County, in the Territotyr of Washington, being duly sworn, says that he is in n' way interested in the tract of land claimed as a donation by Wil'iam Craig, and particularly described in the annexed no'ification to the register and receiver of Washington Territory; that he is personally acquainted with said William Craig, and knows that he has personally resided upon and cultivated said tract of land continuously from the 15th day of October, 1849, to the fourth day of June, A. D. 1855.

HENRI M. CHASE.

Subscribed and sworn to before me th's 4th day of June, A. D. L855.

HENRY R. CROSBIE,
Clerk U. S. District Court, Clark County, Washington Territory.

No. .

William C. McKay, of Wasco County, in the Territory of Oregon, being first duly sworn, says that he is in no way interested in the tract of land

claimed as a donation by William Craig, and particularly described in the annexed notification to the register and receiver of Washington
63 Territory; that he is personally acquainted with the said William Craig, and knows that he has personally resided upon and cultivated said tract of land continuously from the 10th day of June, 1849, to the 4th day of June, A. D. 1855.

WM. C. MCKAY.

Subscribed and sworn to before me this 4th day of June, 1855.

HENRY C. CROSBIE,
Clerk U. S. District Court, Clark County, W. T.

No. .

Louis Raboin, of Wallawalla County, in the Territory of Washington, being first duly sworn, says that he is personally acquainted with William Craig, the person who claims a donation right to the tract of land described in the annexed notification to the register and receiver of said Territory, and Isabel Craig, his wife, and that he has known them to live together as man and wife from the 6th day of Julu, 1838, to the 4th day of June, A. D. 1855, and that they are and were treated by their neighbors as such during said period.

his
LOUIS x RABION.
mark.

Witness: A. HIESENTHAL.

Subscribed and sworn to before me this 4th day of June, A. D. *L*855.

HENRY R. CROSBIE,
Clerk U. S. District Court, Clark Co., W. T.

Affidavit of settler.

William Craig, of Wallawalla County, in the Territory of Washington, being duly sworn, says that he is a white settler on public lands in said Territory; that he arrived in Oregon on the 25th day of July, A. D. 1829; that he is a native-born citizen of the United States; that he was born in Greenbrier County, in the State of Virginia, in the year 1807; that he has personally resided on and cultivated that part of the public lands, in the Territory aforesaid, particularly described in the annexed notification to the register and receiver of said Territory continuously from the 15th day of September, A. D. 1846, to the 4th day of June, A. D. 1855. And he further says that he is intermarried with Isabel
64 Craig, his wife, and that he was legally married to her on the 6th day of July, A. D. 1838, in Missouri Territory, and that they had issue—Joseph, born Sept. 10, 1840; Martha, born Feb. 20th, 1842; Adeline, born *born* May 5th, 1845; Mary, born Aug. 24th, 1850; Anna, born June 12th, 1853.

WILLIAM CRAIG.

Subscribed and sworn to before me this 4th day of June, A. D. 1855.

HENRY R. CROSBIE,
Clerk U. S. District Court, Clark Co., Wash. Ter.

No. .

Territory of Washington.—Notification.

To the Register and Receiver of Washington Territory of Settlement of Public Land not yet Surveyed:

Pursuant to the act of Congress approved on the 14th day of February, 1853, entitled "An act to amend an act entitled an act to create the office of surveyor-general of public lands in Oregon and to provide for the survey, and make donations to settlers of the public lands and amendments thereto," I, William Craig, of Wallawalla County, in the Territory of Washington, hereby give notice of my claim to donation of 640 acres of land, particularly bounded and described as follows: Beginning at stake 30 yards north of Lapwai Creek, thence west two miles to a pile of rocks, thence south half a mile to a stake, thence east two miles to a cottonwood tree, thence north half a mile to the place of beginning.

WILLIAM CRAIG.

Which said proof was filed in the U. S. land office at Olympia, Washington Ty., June 19th, 1855.

(Endorsed on back:) Not. No. William Craig. Filed June 19th, 1855.

IV. That after the making of the proof hereinbefore set out, the said William Craig and wife received a letter from the officers of the land office at Olympia, Washington, to which office their proof had been sent, wherein they notified said Craig that his filings and proof were
65 complete, and that he had as complete title to said land as could be acquired prior to issuing of patent; that patent could not issue until the Government survey had been extended over the country.

V. That in a treaty made between the Government of the United States and the Nez Perce Indians, on June 11th, 1855, as will more fully appear in 12 Statutes of the United States, page 957, by article 10 of said treaty, it was agreed, in consideration of the said Craig having uniformly shown himself a friend to the Nez Perce Indians, "That the tract of land now occupied by William Craig and described in his notice to the register and receiver of the land office of the Territory of Washington, on the 4th day of June last, shall not be considered a part of the reservation provided for in this treaty, except that it shall be subject, in common with the lands of the reservation, to the operation of the intercourse act."

VI. That no general survey of the land in question was made by the Government until the year 1870, when one D. P. Thompson, a deputy surveyor of the U. S. Government, was engaged in making and extending the first surveys of the Government over townships 35 N., of R. 3 W., Boise meridian, in which is included the land in controversy, and was at the same time surveying through surrounding townships. A certified copy of his said survey made at the time is hereto attached as a part of the facts stipulated and marked Exhibit A.

At the time the said D. P. Thompson made said surveys, one Jos. K. Vincent, who was the tenant and lessee of the heirs of the said William Craig and of the said Samuel Phinney, employed the said D. P. Thompson to survey the said donation claim of the said William Craig, and the facts contained in the affidavit of the said Jos. K. Vincent are found to be true, as follows:

TERRITORY OF IDAHO,
County of Nez Perce, ss:

66 JOSEPH K. VINCENT, being duly sworn, on oath says: That he was well acquainted with William Craig and Isabel Craig, his wife, and the land embraced in their donation claim, situated in township 35 N., R. 3 W., B. M., within the boundaries of the Nez Perce Indian Reservation; that during the year 1870 affiant resided on said land as the tenant and agent of Samuel Phinney, claimant of said land under the deed from the Craig heirs; that during the summer of 1870 D. P. Thompson, a United States surveyor employed in surveying said reservation at the request and for Mr. Phinney, surveying the donation claim of William Craig, according to the lines as claimed by said donation claimant; that affiant paid said D. P. Thompson as amount of about forty one or two dollars in payment of said survey, for Samuel Phinney, taking a receipt from D. P. Thompson for the amount paid for said donation survey; that he turned said receipt over to said Phinney, which said Phinney tells him had been lost; that he has at different times seen the plat of said donation claim in the office at the Lapwai Indian Agency, where it is designated on said plat as the Craig donation claim, and is the plat of the same survey for which he paid D. P. Thompson; that said affiant has been acquainted with said land as the donation claim of William Craig since August, 1862.

(Signed) JOSEPH K. VINCENT.

Subscribed and sworn to before me at my office, in the city of Lewiston, Nez Perce County, Idaho Territory, this 6th day of May, 1890.

[SEAL.] RICHARD J. MONROE,
Notary Public.

That the survey was made as aforesaid at that time, and the plat thereof put on file at the office of the Indian agent at Lapwai, Idaho. That during the month of October or November, 1887, R. J. Monroe, esqr., attorney for the said Samuel Phinney and the said Craig heirs, addressed a letter to the Hon. Commissioner of the General Land Office, at Washington, D. C., making inquiries in regard to the status of the Craig donation
67 claim, in reply to which letter the Commissioner of the Land Office stated that the proof of said William Craig, copies of which are hereinbefore set out in this stipulation, was deficient for the reason that the said proof was not accompanied by the affidavit required by section 12 of the said donation act approved Sept. 27th, 1850.

II. That no certificate of the surveyor-general or the register and receiver of the local land office appears to have been made setting forth the facts in the case and specifying the land to which the party is entitled, as is prescribed by the 7th section of said donation act. On receipt of this last said letter the said Samuel Phinney, through his attorney, on Dec. 20th, 1890, made application to the surveyor-general of Idaho for an order of survey of said land. On March 14th, 1890, said surveyor-general ruled that he had no authority to issue said order, for the reason that said lands were included within the lands of the said Nez Perce Indian Reservation. On receipt of this letter from the said surveyor-general of Idaho the attorney for the said Phinney and the Craig heirs applied to the Hon. Commissioners of the General Land Office for a patent, enclosing said plat and plats of the survey made by the said D. P.

Thompson in 1870, as follows: The affidavit of the said Jos. K. Vincent, hereinbefore se' out a copy of the plat of the survey, showing the survey of the donation claim, duly certified by the surveyor-general of Idaho Territory on Dec. 30, 1870, being the same as is hereto attached as Ex. A.

That the honorable Commissioner of the Land Office refused to issue the patent on the ground that the treaty provisions of June 11th, 1855, conferred no title or authority to issue patent to William Craig and wife, but simply granted a right to occupancy so long as the Indian title to the reservation remained unextinguished, and that Congress, in the preamble of an act approved March 3, 1873 (7 Statutes, 677), construed the right of William Craig as a personal right to occupy the land was not mentioned, and that right ceased with hi*d* death.

68 III. That no affidavit seems to have been made by William Craig, as required by section 12 of the act of September 27th, 1850 (9th Statutes, 496.)

IV. That no certificate of the surveyor-general or the register and receiver appears to have been made setting forth the facts in the case, as required by the 7th section of said act.

V. For the reason that said land was not subject to donation entry when Craig made his settlement, because the Indian title had not then been extinguished.

It is further stipulated that the defendant, Joseph Robinson, now is and since prior to the first day of September, 1893, has been qualified and acting as U. S. Indian agent of the Nez Perce Indians in Idaho, and that he assumed to exercise control and authority over the land described in the complaint herein as such agent.

II. That the land described in the complaint is the same land referred to in article 10 of the treaty made June 11th, 1855, between the United States and the Nez Perce tribe of Indians.

III. That the said land, ever since the execution of the said treaty, has been included within the exterior boundaries of the said Indian reservation. That said Indian agent ordered the plaintiff to remove from said land, as Indian agent aforesaid, acting under and by direction of the Commissioner of Indian Affairs and Secretary of Interior.

That on the 14th day of March, 1890, the surveyor-general of Idaho, acting under orders from the Commissioner of the General Land Office at Washington, refused to survey said claim as a donation claim, on the ground that said land was, at the time of the application therefor, included in and a part of the Nez Perce Indian Reservation.

69 That the land described in said complaint, to wit, the undivided one-half interest in said donation claim, now is and at the time of the commencement of the suit herein was of the value over $2,000.00.

VII. That the said William Craig and Isabel Craig, who are now dead, and before their said death, by a proper deed of conveyance in fee simple, on Feb. 13th, 1869, conveyed all their right, title, and interest in and to said land to one Samuel Phinney and Moses H. Rice, said Phinney having intermarried with a daughter of the said William and Isabel Craig, the issue of their said marriage, and subsequently the said Rice conveyed his interest thereto to said Phinney; and that the said Phinney, under said conveyance, went into the possession of and continued to occupy and cultivate the said land until the 9th day of March, 1891, when the said

Samuel Phinney, by a proper deed of conveyance, conveyed all his right, title, and interest to an undivided one-half interest in the said tract of land to William A. Caldwell, who is the plaintiff in this action.

That on the 9th day of March, in common with the said Phinney, he went into the possession of the said tract of land and has, with the said Phinney, continued ever since to occupy, cultivate, and use the same.

II. As a conclusion of law from the above facts the court finds that the said William A. Caldwell, the plaintiff in the said action, is entitled to have the injunction heretofore issued in this action made perpetual, and to have a decree entered quieting his title to the undivided ½ interest in and to the said tract of land mentioned and described in the complaint in this action. And the court hereby orders a judgment and decree to be entered accordingly.

Dated this 27th day of January, 1894.

JAS. H. BEATTY, *Judge.*

(Endorsed:) No. 89. In the circuit court of the United States for the district of Idaho. William A. Caldwell vs. Joseph Robinson, defendant. Findings of facts and conclusions of law. Filed this 29th day of January, 1894. A. L. Richardson, clerk.

70 *Decree.*

In the circuit court of the United States for the central division of the district of Idaho.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT.

This action coming on regularly for trial on the 29th day of December, A. D. 1893, on motion to dissolve the injunction heretofore issued herein, and by agreement and stipulation of the parties, filed in the said action, it was agreed that the same should be removed from the said northern division of the district of Idaho to the central division of the said district of Idaho, and that the action should be heard and tried upon its merits upon the statement of facts stipulated and agreed upon by the respective parties and filed in this cause, and the case having been regularly called and tried by the court upon the said stipulation and agreement, and the findings of fact, conclusions of law, and the decision thereon having been duly rendered by the court, which are now on file in this case, wherein judgment was awarded in favor of William A. Caldwell, plaintiff, against the defendant, Joseph Robinson, on motion of James W. Reid, esqr., plaintiff's attorney, it is now, therefore, hereby ordered, adjudged, and decreed that the plaintiff have judgment as prayed for in his complaint herein against the defendant, Joseph Robinson; that all adverse claims of the defendant and all persons claiming or to claim said premises or any part thereof, through or under said defendant, are hereby adjudged and decreed to be invalid and groundless, and that the plaintiff be, and he is hereby, declared and adjudged to be the true and lawful owner of the undivided one-half interest of the land described in the complaint, and hereinafter

described, and every part and parcel thereof; and that his title
71 thereto is adjudged to be quieted against the claims, demands, and pretensions of the defendant, who is hereby perpetually estopped from setting up any claim thereto or any part thereof; said premises are bounded and described as follows, to wit:

The tract of land, situated in the county of Nez Perce, in the State of Idaho, bounded and described as follows: Beginning at a stake 30 yards north of Lapwai Creek, thence west 2 miles to a pile of rocks, thence south ½ mile to a stake, thence east 2 miles to a cottonwood tree, thence north ½ mile to the place of beginning, known as the William Craig donation claim, and containing 640 acres.

It is further ordered, adjudged, and decreed by the court that the injunction heretofore granted in this case be, and the same hereby is, made perpetual.

Dated this 27th d'y of January, 1894.

JAS. H. BEATTY, *Judge.*

(Endorsed:) Case No. 89. In the circuit court of the United States for the district of Idaho. William A. Caldwell, plaintiff, vs. Joseph Robinson, defendant. Decree. Filed this 29th day of January, 1894. A. L. Richardson, clerk. Jas. W. Reid, attorney for defendant.

72 *Certificate to judgment roll.*

In the circuit court of the United States for the district of Idaho.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT. } No. 89.

I, the undersigned, clerk of the circuit court of the United States for the district of Idaho, do hereby certify that the foregoing papers hereto annexed constitute the judgment roll in the above-entitled action.

Attest my hand and the seal of said circuit court this 29th day of January, 1894.

[SEAL.] A. L. RICHARDSON, *Clerk.*

(Endorsed:) In the circuit court of the United States for the district of Idaho. Judgment roll, No. 89. William A. Caldwell vs. Joseph Robinson. Register, No. 89. Filed January 29th, 1894. A. L. Richardson, clerk.

73 *Defendant's bill of exceptions.*

In the circuit court of the United States within and for the central division of the district of Idaho.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT. } Defendant's bill of exceptions.

Be it remembered that this cause was duly commenced in the district court of the second judicial district of the State of Idaho, in and for the

county of Nez Perce, by filing the complaint therein, on the 20th day of October, 1893, and thereafter (the defendant having answered and the cause coming on regularly for trial on motion of defendant) the said cause, by order of the court, was duly removed and transferred to the circuit court of the United States within and for the northern division of the district of Idaho.

Be it further remembered that it was stipulated and agreed between the respective parties hereto that the said cause should be, and the same was, transferred from the circuit court of the United States within and for the northern division of the district of Idaho to the circuit court of the United States within and for the central division of the district of Idaho, for trial, and, after the trial thereof, it was further stipulated and agreed that either party should have 60 days after notice of the decision of the court in which to prepare and file his bill of exceptions.

Be it further remembered that this cause coming on regularly to be heard on the 29th day of December, 1893, the following facts were then and there agreed and stipulated by the respective parties hereto:

74 In the circuit court of the United States within and for the northern division of the district of Idaho.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT. } Facts stipulated on trial of action.

In the above-entitled cause the following facts are hereby stipulated and agreed upon by and between the parties on trial of action, on this the 29th day of December, 1893, to wit:

I. That one William Craig was a native-born citizen of the United States; that he was born in Greenbrier County, in the State of Virginia, in the year 1807; that on the 6th day of July, 1838, the said William Craig intermarried with Isabel Craig, an Indian woman, and belonging to the Nez Perce tribe of Indians; that the said William Craig and his wife, Isabel Craig, on the 15th day of Sept., 1846, located and settled upon the following-described tract of land: Beginning at a stake thirty yards north of Lapwai Creek; thence west two miles to a pile of rocks; thence south half a mile to a stake; thence east two miles to a cot'onwood tree; thence north half a mile to the place of beginning, containing 640 acres, which said tract of land was a part of the public domain of the United States, lying in the Indian country, in the then Territory of Oregon, but now in the State of Idaho, and included within the bounds of the present Nez Perce Indian Reservation.

II. That the said William Craig and his wife, Isabel Craig, continued to reside upon and cultivate the said tract of land from the 15th day of September, 1846, until the 4th day of June, 1855, when the said William Craig, his wife then being alive and residing with him upon the same tract of land, filed his notification to the register and receiver of the
75 land office of the then Washington Territory, situated at Olympia, for the settlement of said land which had not yet been surveyed, in the following words and figures, to wit:

Pursuant to the act of Congress, approved on the 14th day of February, 1853, entitled "An act to amend an act entitle' 'An act to create the

office of surveyor-general of public lands in Oregon, and to provide for the survey and make donations to the settlers of the public lands,' and amendments thereto," I, William Craig, of Wallawalla County, in the Territory of Washington, hereby give notice of my claim to donation of six hundred and forty acres of land, particularly bounded and described as follows: Beginning at a stake thirty yards north of Lapwai Creek; thence west two miles to a pile of rocks; thence south half a mile to a stake; thence east two miles to a cottonwood tree; thence north one-half mile to the place of beginning. (Signed) William Craig, and filed the same in the office of the receiver and register of the said land office, 19th day of June, 1850.

III. That said William Craig and his wife, Isabel Craig, continued to reside upon and cultivate said land from the 15th day of December, 1846, until his death in year 1869.

That on the 4th day of June, 1855, said Willliam Craig and Isabel Craig made proof of their said settlement and cultivation of said land before Henry R. Crosbie, clerk of the U. S. district court for Clark County, Washington Territory.

No. .

HENRI M. CHASE, of Wallawalla County, in the Territory of Washington, being first duly sworn, says: That he is in no way interested in the tract of land claimed as a donation by Willam Craig and particularly described in the annexed notification to the register and receiver of Washington Territory; that he is personally acquainted with said William Craig, and knows that he has personally resided upon and cultivated said tract of land continuously from the 15th day of October, 1849, to the 4th day of June, A. D. 1855.

HENRI M. CHASE.

76 Subscribed and sworn to before me this 4th of June, A. D. 1855.

HENRY R. CROSBIE,
Clerk U. S. District Court, Clark Co., Wash. Territory.

No. .

WILLIAM C. MCKAY, of Wasco County, in the Territory of Oregon, being first duly sworn, says: That he is in no way interested in the tract of land claimed as a donation by Mr. William Craig, and particularly described in the annexed notification to the register and receiver of Washington Territory; that he is personally acquainted with said William Craig, and knows that he has personally resided upon and cultivated the said tract of land continuously from the 10th day of June, 1849, to the 4th day of June, A. D. 1855.

WM. C. MCKAY.

Subscribed and sworn to before me this 4th day of June, 1855.

HENRY R. CROSBIE,
Clerk of U. S. Dist. Court, Clark Co., W. T.

No. .

LOUIS RABOIN, of Wallawalla County, in the Territory of Washington, being first duly sworn, says: That he is personally acquainted with

William Craig, the person who claim' a donation to the tract of land described in the annexed notification to the register and receiver of said Territory, and Isabel Craig, his wife, and that he has known them to live together as man and wife from the 6th day of July, 1838, to the 4th day of June, 1855, and that they are and were reputed by their neighbors as such during said period.

his
LOUIS x RABOIN.
mark.

Witness: A HEISENTHAL.

Subscribed and sworn to before me this 4th day of June, 1855.

HENRY R. CROSBIE,
Clerk U. S. Dist. Court, Clark Co., W. T.

77 *Affidavit of settlers on unsurveyed land, claiming under the 4th section of act of 27th September, 1850, and the amendments thereto.*

WILLIAM CRAIG, of Wallawalla County, in the Territory of Washington, being first duly sworn, says: That he is a white settler on public lands in the said Territory; that he arrived in Oregon on the 25th day of July, 1829; that he is a native-born citizen of the United States; that he was born in Greenbrier County, in the State of Virginia, in the year 1807; that he has personally resided upon and cultivated that part of the public land in the Territory aforesaid, particularly described in the annexed notification to the register and receiver of the said Territory, continuously from the 15th day of September, A. D. 1846, to the 4th day of June, 1855; and he further says that he is intermarried with Isabel Craig, his wife, and that he was legally married to her on the 6th day of July, A. D. 1838, in Missouri Territory, and that they have issue: Joseph, born Sept. 10th, 1840; Martha, born Feb. 20th, 1842; Adeline, born May 5th, 1845; Mary, born August 24th, 1850; Anna, born June 12th, 1853.

WILLIAM CRAIG.

Subscribed and sworn to before me this 4th day of June, A. D. 1855.

HENRY R. CROSBIE,
Clerk U. S. Dist. Court, Clark Co., Wash. Ter.

Territory of Washington.—Notification.

No.

To the Register and Receiver of Washington Territory of Settlement on Public Land not yet Survey'd:

Pursuant to the act of Congress, approved on the 14th day of Feb., 1853, entitled "An act to amend an act entitled 'An act to create the office of surveyor-general of public lands in Oregon and to provide for the survey and make donations to settlers on the public lands,' and
78 amendments thereto," I, William Craig, of Wallawalla County, in the Territory of Washington, hereby give notice of my claim to donation of 640 acres of land particularly described and bounded as follows: Beginning at a stake thirty yards north of Lapwai Creek; thence west two miles to a pile of rocks; thence south one-half mile; thence east two miles to a cottonwood tree; thence north to the place of beginning one-half mile.

WILLIAM CRAIG.

Which said proof was filed in the U. S. land office at Olympia, Washington Ty., June 19th, 1855.

(Endorsed on back:) Not. No. 1271. . William Craig. Filed June 19th, 1855.

IV. That after the making of the proof hereinbefore set out, the said William Craig and wife received a letter from the officers of the land office at Olympia, Washington, to which office their proof had been sent, wherein they notified said Craig that his filings and proof were complete, and that he had as complete title to said land as could be acquired prior to the issuing of patent; that patent could not be issued until Government survey had been extended over the country.

V. That in a treaty made between the Government of the United States and the Nez Perce Indians on June 11th, 1855, as will more fully appear in 12 Statutes of the United States, page 957, by article 10 of said treaty, it was agreed, in consideration of said Craig having uniformly shown himself a friend to the Nez Perce Indians, "that the tract of land now occupied by William Craig and described in his notice to the register and receiver of the land office in the Territory of Washington on the 4th day of June last shall not be considered a part of the reservation provided for in this treaty, except that it shall be subject, in common with the lands of the reservation, to the operation of the intercourse act."

VI. That no Government survey of the land in question was made by the Government until the year 1870, when one D. P. Thompson,
79 a *a* deputy surveyor of the U. S. Government, was engaged in making and extending the first surveys of the Government over township 35 N., of R. 3 W., B. M., in which is located the land in controversy, and was at the same time surveying through surrounding townships. A certified copy of his said survey made at said time is hereto attached as a part of the facts stipulated hereto marked Exhibit A.

At the time the said D. P. Thompson made said survey, one Jos. K. Vincent, who was the tenant and lessee of the heirs of the said William Craig and of the said Samuel Phinney, employed the said D. P. Thompson to survey the said donation claim of the said William Craig, and it is hereby stipulated and agreed that the facts stated in the affidavit of the said Jos. K. Vincent are true, as follows:

TERRITORY OF IDAHO,
County of Nez Perce, ss:

JOSEPH K. VINCENT, being duly sworn on oath, says: That he was well acquainted with William Craig and Isabel Craig, his wife; and the land embraced in their donation claim situated in Tp. 35 N., R. 3 W., B. M., within the boundaries of the Nez Perce Indian Reservation. That during the year 1870 affiant resided on said land as the tenant and agent of the said Samuel Phinney, claimant of said land, under deed from the Craig heirs. That during the summer of 1870 D. P. Thompson, a United States surveyor employed in surveying said reservation at the request and for Mr. Phinney, surveying the donation claim of William Craig, according to the lines as claimed by said donation claimant. That affiant paid said D. P. Thompson an amount of about forty or forty one or two dollars in payment of said survey for Samuel Phinney, taking a receipt for the

amount paid for said donation survey. That he turned said receipt over to said Phinney, which said Phinney tells him has been lost; that he at different times seen the plat of said donation claim in the office at the Lapwai Indian Agency, where it is designated on said plat as the Craig donation claim, and is the plat of the same survey for which he paid said
D. P. Thompson. That said affiant has been acquainted with said
80 land as the donation claim of William Craig since August, 1862.

(Signed) JOSEPH K. VINCENT.

Subscribed and sworn to before me at my office in the city of Lewiston, Nez Perce County, Idaho Territory, this 6th day of May, 1890.

[SEAL.] RICHARD J. MONROE,
Notary Public.

That the survey was made as aforesaid at the time and the plat thereof put on file at the office of the Indian agent at Lapwai, Idaho. That during the month of October or November, 1887, R. J. Monroe, esqr., attorney for the said Samuel Phinney and the said Craig heirs, addressed a letter to the Hon. Commissioner of the General Land Office at Washington, D. C., making inquiries in regard to the sta'us of the Craig donation claim, in reply to which said letter the Commissioner of the Land Office stated that the proof of the said William Craig, copies of which are hereinbefore set out in this stipulation, was deficient for the reason that the said proof was not accompanied by the affidavit required by section 12 of said donation act approved Sept. 27th, 1850.

II. That no certificate of the surveyor-general of the register and receiver of the local land office appears to have been made setting forth the facts in the cas ', and specifying the land to which the party is entitled, as is prescribed by the 7th section of said donation act. On receipt of this last said letter, the said Samuel Phinney, through his attorney, on Dec. 20th, 1890, made application to the surveyor-general of Idaho for an order of survey of said land. On March 14th, 1890, said surveyor-general ruled that he had no authority to issue said order for the reason that said lands were included within the lands of the Nez Perce Indian Reservation. On receipt of this letter from the said surveyor-general of Idaho, the attorney for the said Samuel Phinney and the Craig heirs applied to the
Hon. Commissioner of the General Land Office for a patent, and
81 enclosed said plat and maps of the survey made by the said D. P. Thompson, in 1870, as follows: The affidavit of said Joseph K. Vincent, hereinbefore set out, and a copy of the plat of the survey, showing the survey of the donation claim, duly certified by the surveyor-general of Idaho Territo*yr*, on Dec. 30, 1870, being the same as is hereto attached as Ex. A.

That the Hon. Commissioner of the Land Office refused to issue the patent on the ground that the treaty provisions of June 11th, 1855, conferred no title or authority to issue patent to William Craig and wife, but simply granted a right occupancy as long as the Indian title to the reservation remained unextinguished, and that Congress, in the preamble approved March 3rd, 1873 (7 Statutes, 677), construed the right of William Craig as a personal right to occupy the land, was not mentioned, and that his right ceased with his death.

III. That no affidavit seems to have been made by William Craig as required by 12th section of the act of September 27th, 1850 (9th Statutes, 496.)

IV. That no certificate of the surveyor-general or the register and receiver appears to have been made setting forth the facts in the case, as required by the 7th section of said act.

V. For the reason that said land was not subject to donation entry when Craig made his settlement, because the Indian title had not then been extinguished.

It is further stipulated that the defendant, Joseph Robinson, now is, and since prior to the first day of September, 1893, has been, qualified and acting U. S. Indian agent of the Nez Perce Indian' in Idaho, and that he assumed to exercise control and authority over the land described in the complaint herein as such Indian agent.

II. That the land described in the complaint is the same land referred to in article 10 of the treaty made June 11th, 1855, between the United States and the Nez Perce tribe of Indians.

III. That said land ever since the execution of the said treaty has been included within the exterior boundaries of the said Indian
82 reservation; that said Indian agent ordered the plaintiff to remove from said land, as Indian agent aforesaid, acting under and by direction of the Commissioner of Indian Affairs and Secretary of the Interior.

IV. That on the 14th day of March, A. D. 1890, the surveyor-general of Idaho, acting under orders from the Commissioner of the General Land Office at Washington, refused to survey said claim as a donation claim, on the ground that the said land was, at the time of the application therefor, included in and part of the Nez Perce Indian Reservation. That the land described in the said complaint, to wit, the undivided one-half interest in said donation claim, now is, and at the time of the commencement of the suit herein was, of the value of over $2,000.00, exclusive of interest and cost.

VII. That the said William Craig and Isabel Craig, who are now dead, and before their said death, by a proper deed of conveyance in fee simple, on Feb. 13th, 1869, conveyed all their right, title, interest in and to the said land to one Samuel Phinney and Moses H. Rice, said Phinney having intermarried with a daughter of said William and Isabel Craig, the issue of their said marriage, and subsequently the said Rice conveyed his interest thereto to said Phinney, and that the said Samuel Phinney, under said conveyance, went into the possession of and continued to occupy and cultivate the said land until the 9th day of March, 1891, when the said Samuel Phinney, by a proper deed of conveyance, conveyed all his right, title, and interest to an undivided one-half interest in the said tract of land to William A. Caldwell, who is the plaintiff in this action. That on the 9th day of March, 1891, in common with the said Samuel Phinney, he went into the possession of the said tract of land, and has, with the said Phinney, continued ever since to occupy, cultivate, and use the same.

Whereupon the case was then and there argued to the court by the counsel for the respective parties, and was by the court taken under advisement; and the court thereafter, being fully advised, on the 22d
83 day of Jan., 1894, filed a written decision, which was and is in words and figures as follows, to wit:

Decision of court.

In the circuit court of the United States, district of Idaho.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT.
} Decision of court.

James W. Reid, attorney for complainant, and Fremont Wood, U. S. attorney, for defendant.

This cause was removed from the State court, wherein an order had been made enjoining defendant from ejecting plaintiff from certain lands. The motion for dissolution of such order being called, the parties, stipulation to submit the case upon its merits, agreed to a statement of facts, among which are:

I. That William Craig, a citizen of the United States, with his wife, an Indian woman, in the year 1846, settled upon the tract of land in controversy, containing 640 acres, situated within the Nez Perce Indian Reservation, in the State of Idaho, but at the time of settlement within what was Oregon Territory; that they resided upon and cultivated the said land from such settlement until 1869; that on June 4th, 1855, said Craig filed in the proper land office the notice of his claim to such land and a description thereof, under the act of September 27th, 1850 (9 Stat., 496), commonly known as the Oregon donation act, and at the same time made and filed in said land office his proof of residence upon and cultivation of such land for four years; that by mesne conveyance complainant is now in the possession of and claims to own the undivided one-half of the land, the legal title being still in the Government; that defendant is the Indian agent in charge of such reservation, and that only as such, and under instructions from his superior officers of the Interior Department, his actions in this matter were taken.

II. The defendant claims that Craig's settlement was void, because
84 at the time made the "Indian title" to the land had not been extinguished. That title was only such as attached to the unsettled and unoccupied public domain which had not been designated by Congress for some special purpose, for, as far as appears, the land in question had not been so designated prior to such settlement.

It is unnecessary to now indulge in any reflections upon the system of ethics which governed the Christian world in the acquisition of this country. Our aggressions upon the rights of the native race may continue to be as they have been, a subject for pathetic song and for the casuist's pen, but not one for present consideration.

It has long been settled that the Indians had no title to this continent which we felt bound to consider during the process of its acquisition. When the Christian princess of Europe commissioned their subjects upon voyages of discovery, it was not doubted that all lands found by them in possession only of the heathen could lawfully be taken by the discovere', and from then until now the Indian heritage has been transfer'ed from one government to another, and to their subjects, in total disregard of any title or claim thereto by the natives.

From the Mississippi River to the South Sea the country was claimed under an absolute title by the Governments of France and Spain. Their

title passed to the United States by treaties with France in 1803, and with Spain in 1819.

The only right ever conceded to the Indian was that of occupancy, which has generally proved to be the merest shadow of a right when it became inconvenient to the dominant race.

This question is fully reviewed by Chief Justice Marshall in Johnson vs. McIntosh, 8 Wheat., where, upon page 585, it is said, "It has never been doubted that either the United States or the several States had a clear title to all the lands within the boundary lines described in the treaty (with Great Britain in 1783) subject only to the Indian's right of occupancy, and that the exclusive power to extinguish that right was vested in
85 the Government, which might constitutionally exercise it," and on page 587, "The United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country; they hold and assert in themselves the title by which it was acquired.

"They maintain, as all others have maintained, that discovery gave the 'xclusive right to extinguish the Indian title of occupancy, either by purchase or conquest, and gave also a right to such a degree of sovereignity as the circumstances of the people would allow them to exercise. The power now possessed by the Government of the United States to grant lands resided, while we were colonies, in the Crown or its grantees. The validity of the title given by either has never been questioned by our courts. It has been exercised uniformly over the territory in possession of the Indians.

"The existence of this power must negative the existence of any right which may conflict with and control it."

The land in controversy having never, prior to its settlement in 1846, and as we shall see, never prior to 1855, been within any Government reservation, it would seem clear that the only title the Indians had to it was that of such occupancy as they had to unoccupied public lands in general and that this right they held only by the voluntary consent of the Government, which it might modify or extinguish, as it desired.

Attention has been called to the intercourse act of June 30, 1834 (4 Stat., 729), defining the country west of the Mississippi River as "Indian country." By sec. 11 it prohibits all white persons from settleng upon "any lands belonging, secured or granted by treaty with the United States, to any Indian tribe."

It does not exclude other lands from such settlement, but on the contrary the reservation of certain lands from settlement would imply authority to occupy those not so reserved; moreover, the act contemplates the residence of whites in the Indian country, for its chief object seems to be to regulate their intercourse with the Indians as to prevent strife and disorder between the two races.

86 The two cases (19 Wall., 591, & 92 U. S., 733) cited by defendant's counsel are concerning lands within Indian reservations, and can not be considered controlling in this case. This right of general occupancy to the public domain is quite different from that given the Indians when a special reservation is by law or treaty assigned to them. This Government treats as something tangible, and of it they are never deprived until they relinquish their claim.

All public lands, including any Indian title thereto, being under the control of the Government, it must follow that any right which Craig may have obtained to the land must have been through the laws of the Government, and any law which granted him such right must at the same time have operated to extinguish the Indian title thereto. It remains, then, to inquire by what, if any, laws or authority Craig's settlement was made.

2. Prior to our treaty of June 15, 1846, with Great Brit*ian*, the Territory of Oregon, including what now constitutes the States of Oregon, Washington, and Idaho, was, by treaties of 1818 and 1827 with Great Brit*ian*, "open and free to the citizens of both po'ers." While in this condition the people of Oregon, in 1845, organized a provisional government, through which any resident of the Territory was allowed a land claim of 640 acres. After our Gov'rnment obtained undisputed control of the country it adopted, in 1848, a Territorial organic act for Oregon, by which the land laws of the provisional government were revoked.

By section 4 of said donation act it was provided that "There shall be, and hereby is, granted 640 acres of land to married persons who shall comply with the provisions of this act so as to entitle them to the grant as above provided, whether under the late provisional government or since," and by sec. 7 that "At any time after the 'xpiration of four years from the date of such settlement, whether made under the laws of the late provisional government or not, shall proce'," &c. Thus Congres' recognized all rights which had accrued under the provisional gov-
87 ernment, but the grant was finally to pass to the settler only by a compl*ai*nce with the conditions prescribed by the donation act.

3. Defendant interposes the objection that this act applied only to the lands west of the Cascade Mountains; hence, not to those in question, which are east of that range.

Sec. 2 provided for the survey only of the lands west of the Cascades; sec. 10 grants two townships therein for university purposes; sec. 7 of the amendatory act of February 14, 1853 (10 Stat., 158), provides for appointment of land office's for the same Territory, and by act of May 29, 1858 (11 Stat., 293), it is directed that "the existing laws relating to the survey and disposal of the public lands in the Territories of Oregon and Washington west of the Cascade Mountains" are made applicable to the country east of those mountains. These provisions, considered alone, give some support to defendant's view, and possibly indicate that Congress, by its last act, so construed its first. Considering, however, the whole act, it clearly appears as intended to apply to the whole Territory. It is reasonable to conclude the survey was limited to the west because most accessible; neither was it needed then in the eastern part, which was little inhabited, while the purpose of the act of 1858 was to extend the surveys, not the act, to the entire Territory.

The donation act re'ognized the claims made under the provisional government, and there can be no pretence that they were limited to the western part of the Territory.

In a contest ever land lying east of the Cascades, in which the donation act was involved, no claim was made that the act was limited to the west thereof (Missionary Society vs. Dalles, 107 U. S., 336), and so far as

observed in the administration of the law it was terated by those enforcing it as applicable to the whole Territory. It must be held applicable to the land in question.

4. What were the requirements of the donation act, and were they complied with by Craig?

88 As required by section 4, he was a citizen of the United States; he and his wife were residents of the Territory, and they resided upon and cultivated the land for four consecutive years immediately prior to June 4th, 1855.

By sections 6 & 7 certain notices were to be served by the settlers upon certain officers, one within three and one within twelve months after the survey of the lands, and "at any time after the expiration of the four years from date of settlement, shall prove by two disinterested witnesses the facts of continued residence and cultivation required by the fourth section of this act." By section 6 of the amendatory act of 1853, the notices were required in advance of the time when the public survey shall be extended over the particular land claimed by "the settler," and the time in which to make them was, by another amendatroy act of July 17, 1854 (10 Stat., 305), extended to December 1st, 1855.

On June 14th, 1855, Craig gave the notices required, and at the same time made the proof demanded by section 4 of the original act. By section 7, a certificate for patent should be issued at the time of making the proof, but it appears the register and receiver of the land office who, by law, had succeeded the surveyor-general notified Craig of the receipt of his proof; that it was satisfactory, but that his certificate could not be issued until after the public survey. This was made in 1870, prior to which Craig and his wife had conveyed their title and died. At the time of this survey the purchasers from Craig had the land surveyed by the Government surveyor and paid him therefor. His subsequent application to the Land Department for his patent was refused because, 1st, the proof was not accompanied by the affidavit required by section 12, to the effect that no sale of the land or contract of sale had been made; and, second, that no certificate, as required by section 7, had been issued.

The affidavit as required by section 12, based also upon a provision of section 4, applied only to settlement made subsequent to December

89 1, 1850, and the provision of section 4 was repealed by section 2 of the act of 1854. By Barney vs. Dolph, 97 U. S., 652, it is held that the settler may, after having performed all the acts required, sell his claim.

From the foregoing it will be seen that by some means Craig had informed himself of the frequent changes in the law, and with which he complied in every particular except, first, his proof of residence and cultivation may have been premature, and, second, that he did not procure his certificate at the time of making his proof.

Are these fatal defects?

There is nothing in any of the acts that directly indicates that the proof should be made prior to the survey; its chief object is to show the settler's compliance with the law. Having done so, why should he not be permitted to show it, and thus, as far as he can, perfect his title? It can not be seen how the Government or others can be damaged by it. The Government should have notice of any claim upon its lands, that other disposition

may not be made of them. Had it been deferred until after the long delayed survey, the settler might have been charged with laches. The Land Department did hold (Ex. B, Defts.) that "the facts that William Craig filed his notices in 1855 and allowed the matter to rest until 1869, when he died, without making any attempt to perfect his claim under donation act, is evidence that he intended to abandon his claim."

It would be a good reason for delaying the proof until after the survey had the act required that such claims must be taken in legal subdivision, but by a fair construction of the acts the settler is not so limited. That the certificate was not issued can not be charged to the neglect of Craig; he had complied with the law fully; his grantees have asked the certificate and a patent and the Government has refused. I am unable to see what more the settler could or was required to do.

90 The question being in the condition shown by the foregoing statement, the Government, on the 11th day of June, 1855 (12 Stat., 951), entered into a treaty with the Nez Perce Indians by which the reservation within which this land lies was assigned to them. Sec. 10 reads as follows: "The Nez Perce Indians having expressed in counsel a desire that William Craig should continue to live with them, he having uniformly shown himself their friend, it is further agreed that the tract of land now occupied by him and described in his notice to the register and receiver, and the land office of the Territory of Washington, on the 4th day of June last, should not be considered a part of the reservation provided for in this treaty, except that it shall be subject, in comm'n with the land of the reservation, to the operations of the intercourse act."

This article was subsequently adopted and ratified by Congress; it contained a notice to that body that Craig claimed the title, and not a mere right of occupancy, to these lands, under laws absolutely granting him such right, by his compliance with their provisions, and the notice referred to in the treaty as filed in the land office with his proof would show not only his claim, but also his compliance with the law. Although Congress had such notice of the claim and recognized Craig's right to the land, as claimed by him, excluding it from the reservation, it has since, by two acts, treated the claim of Craig as a mere right of occupancy.

By the treaty of Jan. 9, 1863 (14 Stat., 647), it was provided that the entire reservation, within which is this land, was set apart to the Indians for their exclusive use, and no white man should be permitted to reside upon the reservation; and by the act of March 3, 1873 (17 Stat., 647), Craig's rights are expressly construed as a mere right of occupancy. That Congress had the right to thus control the land, even to the cancellation of Craig's right and claim thereto, the cases of Frisbis vs. Whiting (9 Wall., 187), and the Yosemite Valley Case (15 Wall., 77) are invoked. It was in effect held by those two cases that under the preemption laws the settler's partial compliance therewith, and his

91 manifested willingness to fully comply, did not give him such a vested right as prevented Congress, prior to his full compliance, from making such other use or appropriation of the land as would operate to prevent him from procuring title. Careful examination of the Yosemite Valley Case, where the question is fully reviewed, will show that the rule applicable to preemption cases will not hold in one like this; it proceeds

upon the theory that, under the preemption law, the Government does not enter into any agreement to convey to the settler the land he locates upon until it shall have allowed him to complete his entry and claim by the payment of the Government price for the land, and that it only allows him the preference over others to buy the land when it shall be offered for sale, and, at any time prior, that the Government may withdraw this privilege and devote the land to any other use. The court said, "Until such payment and entry the act of Congress gives to the settler only a privilege of preemption in case the lands are offered for sale in the usual manner; that is, the privilege to purchase them, in that event, in preference to others. The U. S., by those acts, enters into no contract with the settler, and incur no obligations to anyone that the land occupied by him shall even be put up for sale. They simply declare that, in case any of their lands are thrown open for sale, the privilege to purchase them, in limited quantities at fixed prices, shall be first given to parties who have settled upon and improved them. The legislation thus adopted for the benefit of settlers was not intended to deprive Congress of the power to make any other disposition of the lands before they are offered for sale or to appropriate them to any public use," and upon page 94, "It seems to us little less than absurd to say that the settler or any other person, by acquiring the right to be preferred in the purchase of the property, provided a sale is made by the owner, thereby acquires a right to compel the owner to sell or such an interest in the property as to deprive the owner of the property of the power to control its disposition."

92 The court illustrates the difference between preemption cases and those under the laws where the Government does enter into a direct agreement to convey the title upon compliance with the prescribed precedent conditions by a consideration of the case of Lyttle vs. State of Arkansas (9 How., 314). This was under the act of May 29, 1830 (4 Stat., 427), which by its first section provided "that every settler or occupant of public lands, prior to the passage of this act, who is now in possession and cultivated any part thereof in the year 1829, shall be, and he is hereby, authorized to enter the same, upon making due proof of the pertinent facts."

The settler had complied with the law as far as he could, but the Land Department refused him title, and the court said that "It is a well-established principle that when an individual in the prosecution of a right does everything which the law requires him to do, and he fails to attain his right by a misconduct or neglect of a public officer, the law will protect him," and proceeded to award the title to the settler, as against the State, claiming under a subsequent grant or act of Congress; and in the Yosemite Valley Case, on page 91, the court says of the Lyttle Case: "There is no question about the correctness of the doctrine here announced; it is only a familiar principle which is stated that where one offers to do everything upon which the acquisition of a right depends, and is prevented by a fault of the other side, his right shall not be lost by his failure. The principle only applies when by law or contract the acquisition of a right is made dependent upon the performance of certain specified acts. There can be no such thing as the acquisition of a right of preemption; that is, of the right to be preferred in the purchase of property of the United States until such property is open for sale.

In the case from Arkansas the law of 1830 authorized the entry and sale of the land to the occupants and cultivators; it prescribed certain things to be done to entitle them to purchase; these things were
93 done, or would have been done if the officers of the Government had not failed in their duty.

It is too evident for discussion that the different conclusions reached in the two cases is due solely to the different statutes upon which they rest. The earlier case is based upon a statute which gave these settler' the absolute right to*m* the title, upon compliance with certain conditions, while by the statute involved in the latter case no such right was granted.

The granting clause in the donation act, while not a grant in præsenti, borders closely on it. It reads: "There shall be, and hereby is, granted," &c., to every settler who shall comply with this act. If, under the law of 1830, the settler who complied therewith, as far as permitted by the officers, was entitled to his land, even against a subsequent grant by the Government, this court is justified in the conclusion that it has reached that by Craig's compl*ai*nce with the donation act, in so far as he was not forestalled by Government officials, his right became a vested one, and thus passed beyond the control of Congress.

The plat of survey of the land made by the Government surveyor did not correspond exactly with the description of it as given by Craig. I think it should be surveyed as described in the notices, but substantially as occupied and cultivated, and to the undivided one-half thereof complainant is entitled to retain possession.

The defendant is the agent of the Secretary of the Interior; the power of the court to enjoin his agents has not been discussed. Generally the officers of the Department can not be controlled by injunction or mandamus while acting in a judicial capacity in which their judgment' are to be based upon a consideration of facts, but in this case the actions of the Land Department involved a construction of law which is not subject to the same rule. It is held in Noble vs. U. R. & L. R. R. (147 U. S., 165) that such officers may be enjoined from the performance of an unlawful act; if the complainant is lawfully in the possession of the premises it would be unlawful for the defendant to forcibly eject him, and he may be
94 restrained from so doing. The injunctions granted by the State court will be continued as prayed for by complainant.

The court appreciates the b'neful results that may follow this conclusion. It leaves a tract of land within the reservation subject to the occupation of white men, which is contrary to the wise policy of the Government to exclude them as far as possible. Gladly would the court aid the Indian Department in such exclusions, for there is no'hing in the management of the Indians which results in so much annoyance as the residence among them of the whites, and especially the l'wless and abandoned; but being convinced that the Government, by its laws, authoriz'd this 'ettlement, and after'ards ratified it, my convictions are followed regardless of consequences.

The matter being important, I presume and hope it will be reviewed by a higher court. Therefore, in the absence of counsel, it is directed that defendant have time until otherwise ordered in which to file his bill of exceptions or take any necessary steps for a review of the cause by the proper appel'ate court.

BEATTY, *J.*

Whereupon the defendant excepted to the decision of the court on the ground that the same was error, which exception was then and there by the court duly allowed.

Due service of the foregoing bill of exceptions duly admitted this 14th day of March, A. D. 1894.

JAS. W. REID,
Atty. for Plaintiff.

The plaintiff waives all time in which to file amendments thereto, and agrees and stipulates that the same is correct and may be allowed accordingly.

JAS. W. REID,
Per A. J. GREEN.

95 Wherefore, to the end that the errors in law, if any, committed by the court in its decision and judgment herein, may appear, this, the defendant's bill of exceptions to the decisions and findings of the court, is allowed, signed, sealed, and made a record in this cause by the court.

JAS. H. BEATTY, *Judge.*

Dated this 21 day of March, 1894.

(Endorsed:) In the circuit court of the United States within and for the central division of the district of Idaho. William A. Caldwell, complainant, vs. Joseph Robinson, defendant. Defendant's bill of exceptions. Filed March 21st, 1894. A. L. Richardson, clerk.

(Map.)

96 In the circuit court of the United States for the district of Idaho.

CALDWELL *vs.* ROBINSON. } Opinion.

James W. Reid for complainant; Fremont Wood, U. S. atty., for defendant.

This cause was removed from the State court, wherein an order had been made enjoining defendant from ejecting the complainant from certain lands. The motion for dissolution of such order being called, the parties, stipulating to submit the cause upon its merits, agreed to a statement of facts, among which are: That William Craig, a citizen of the United States, with his wife, an Indian woman, in the year 1846, settled upon the tract of land in controversy, containing 640 acres, situated within the Nez Perce Indian Reservation in the State of Idaho, but at the time of settlement within what was Oregon Territory; that they res'ded upon and cultivated said land from such settlement until 1869; that on June 4, 1855, said Craig filed in the proper land office the notice of his claim to such land and a description thereof, under the act of September 27, 1850 (9 Sta., 496), commonly known as the "Oregon donation act," and at the s'me time made and filed in said land office his proof of residence upon and cultivation of such land for four years; that by mense conveyance complainant is now in the possession of and claims to own the undivided one-half of the land the legal title still being in the Go'ernment;

that defendant is the Indian agent in charge of such reservation, and that only as such and under instructions from his superior officers of the Interior Department his actions in this matt'r were taken.

1. The defendant claims that Craig's settlement was void because at the time made the "Indian title" to the land had not been extinguished. That title was only such as attached to the unsettled and unoccupied public domain which had not been designated by Congress for some special purpose, for, so far as appears, the land in question had not been so designated prior to such settlement.

97 It is unnecessary to now indulge in any reflections upon the system of ethics which governed the Christian world in the acquisition of this country. Our aggressions upon the rights of the native race may continue to be, as they have been, a subject for pathetic song and for the causist's pen, but not one for present consideration. It has long been settled that the Indians had no title to this continent which he felt bound to consider during the process of its acquisition. When the Christian princes of Europe commissioned their subjects upon voyages of discovery it was not doubted that all lands found by them in the possession only of the heathen could lawfully be taken by the discoverer, and from then until now the Indian heritage has been transferred from one government to another, and to their subjects, in total disregard of any claim or title thereto by the natives. From the Mississippi River to the "South Sea" the country was claimed under an absolute title by the Governments of France and Spain. Their title passed to the United States by treaties with France in 1803 and with Spain in 1819. The only right ever conceded to the Indian was that of occupancy, which has generally proven to be the merest shadow of a right when it became inconvenient to the dominant race.

This question is fully reviewed by Chief Justice Marshall in Johnson vs. McIntosh (8 Wheat.), where, upon page 585, it is said: "It has never been doubted that either the United States or the several States had a clear title to all lands within the boundary lines described in the treaty (with Great Britain, 1783), subject only to the Indian's right of occupancy, and that the exclusive power to extinguish that right was vested in that Government, which might constitutionally exercise it."

And on page 587: "The United States, then, have unequivocally acceded to that great and broad rule by which its civilized inhabitants now hold this country. They hold and assert in themselves the title by which it was acquired. They maintain, as all others have

98 maintained, that discovery gave an exclusive right to extinguish the Indian's title of occupancy, either by purchase or conquest, and gave also a right to such a decree of sovereignity as the circumstances of the people would allow them to exercise. The power now possessed by the Government of the United States to grant lands resided while we were colonies in the Crown or its grantees. The validity of the title given by either has never been questioned by our courts; it has been exercised uniformly over territory in possession of the Indians. The existence of this power must negative the existence of any right which may conflict with and control it."

The land in controversy having never, prior to its settlement in 1846, and, as we shall see, never prior to 1855, been within any Government

reservation, it would seem clear that the only title the Indians had to it was that of such occupancy as they had to unoccupied public lands in general, and that this right they held only by the voluntary consent of the Government, which it might modify or extinguish as it desired.

Attention has been called to the intercourse act of June 30, 1834 (4 Stat., 729), defining the country west of the Mississippi River as "Indian country." By section 11 it prohibits all white persons from settling upon "any lands belonging, secured, or granted by treaty with the United States to any Indian tribe." It does not exclude other lands from such settlement, but on the contrary the reservation of certain lands from settlement would imply authority to occupy those not so reserved; moreover, the act contemplates the residence of whites in the Indian country, for its chief object seems to be to so regulate their inter'ourse with the Indians as to prevent strife and disorder between the two races.

The two cases—U. S. vs. Cook (19 Wall., 591), and Leavenworth, L. & G. R. Co. vs. U. S. (92 U. S., 733)—cited by defendant's counsel are concerning lands within Indian reservations, and can not be considered controlling in this case. This right of general occupancy to the
99 public domain is quite different from that given the Indians when a special reservation is by law or treaty assigned to them. This the Government treats as something tangible, and of it they are never deprived until they relinquish their claim. All public lands, including any Indian title thereto, being under the control of the Government, it must follow that any right which Craig may have obtained to the land must have been through the laws of the Government; and any laws which granted him such right must at the same time have operated to extinguish the Indian title thereto. It remains, then, to inquire by what, if any, laws or authority Craig's settlement was made.

2. Prior to our treaty of June 15, 1846, with Great Britain, the Territory of Oregon, including what now constitutes the States of Oregon, Washington, and Idaho, was, by treaties of 1818 and 1827 with Great Britain, "open and free to the citizens of both powers." While in this condition the people of Oregon, in 1845, organized a provisional government, through which any resident of the Territory was allowed a land claim of 640 acres. After our Government obtained undisputed control of the country it adopted, in 1848, a Territorial organic act for Oregon by which the land laws of the provisional government were revoked. By section 4 of the said donation act it was provided that "there shall be and hereby is granted 640 acres of land to married persons who should comply with the provisions of the act so as to entitle them to the grant as above provided, whether under the late provisional government of Oregon or since;" and by section 7, that "at any time after the expiration of four from the date of such settlement, whether made under the laws of the late provisional government or not, shall prove," etc.

Thus Congress recognized all rights which had accrued under the provisional government, but the grant was finally to pass to the settler only by a compliance with the conditions prescribed by the donatio' act.
100 3. Defendant interposes the objection that this act applied only to lands west of the Cascade Mountains; hence not to those in question, which are east of that range. Section 3 provides for the survey only of the lands west of the Cascades; section 10 grants two townships

therein for university purposes; section 7 of the amendatory act of February 14, 1853 (10 Stat., 158), provides for appointment of land officers for the same Territory, and by act of May 29, 1858 (11 Stat., 293), it is directed that "the existing laws relating to the survey and disposal of the public lands in the Territories of Oregon and Washington west of the Cascade Mountains" are made applicable to the country east of those mountains. These provisions, considered alone, give some support to defendant's view, and possibly indicate that Congress by its last act so construed its first. Considering, however, the whole act, it clearly appears as intended to apply to the entire Territory; it is reasonable to conclude the survey was limited to the west because most accessible. Neither was it needed then in the eastern part, which was little inhabited, while the purpose of the act of 1858 was to extend the surveys, not the act, to the entire Territory. The donation act recognized the claims made under the provisional government, and *the*re can be no pretense that they were limited to the western part of the Territory.

In a contest over land lying east of the Cascades, in which the donation act was involved, no claim was made that the act was limited to the west thereof (Missionary Society vs. Dalles, 107 U. S., 336; 2 Sup. Ct., 672), and so far as observed in the administration of the law it was treated by those enforcing it as applicable to the whole Territory. It must be held applicable to the land in question.

4. What were the requirements of the donation act, and were they complied with by Craig? As required by section 4, he was a citizen of the United States. He and his wife were residents of the Territory,
101 and they "resided upon and cultivated the land for four consecutive years" immediately prior to June 4, 1855. By section 6 & 7, certain notices were to be served by the settler upon certain officers, one within three and the other within twelve months after the survey of the lands, and "at any time after the expiration of four years from date of settlement shall prove by two disinterested witness' the facts of continued residence and cultivation required by the fourth section of this act." By section 6 of the amendatory act of 1853 the notices were required "in advance of the time when the public survey shall be extended over the particular land claimed by" the settler, and the time in which to make them was by another amendatory act, of July 17, 1854 (10 Stat., 305), extended to December 1, 1855. On June 4, 1855, Craig gave the notices required, and at the same time made the proof demanded by section 4 of the original act. By section 7 a certificate for patent should be issued at the time of making this proof, but it appears the register and receiver of the land office, who by law had succeeded the surveyor-general, notified Craig of the receipt of his proof; that it was satisfactory, but that his certificate could not be issued until after the public survey, which was not made until 1870, prior to which Craig and his wife had conveyed their title and had died. At the time of this survey the purchaser from Craig had the land surveyed by the Government surveyor, and paid him therefor. His subsequent application to the Land Department for his patent was refused, because, first, the proof was not accompanied by the affidavit required by section 12, to the effect that no sale of the land or contract of sale had been made; and, second, that no certificate, as required by section 7, had been issued. The affidavit required by section 12 (based also upon

a provision of section 4) applied only to set'lements made subsequent to December 1, 1850, and the provisions of section 4 was repealed by section 2 of the act of 1854. By Barney vs. Dolph (97 U. S., 652) it is held that the settler may, after having performed all the acts required, sell his claim.

102 From the for'*gin*ing it will be seen that by some means Craig had informed himself of the frequent changes in the law, and with which he complied in every particular, except, first, his proof of resi'ence and cultivation may have been premature; and second, that he did not procure his certificate at the time of making his proof. Are these fatal defects?

There is nothing in any of the acts that directly indicate that the proof should not be made prior to the survey. Its chief object is to show the settler's compliance with the law. Having done so, why should he not be permit'ed to show it, and thus, as far as he can, perfect his title? It can no' be seen how the Government or others can be damaged by it. The Government should have notice of any claim upon its lands, that other disposition may not be made of them. Had it been deferred until after *h* the long-delayed survey, the settler might have been charged with laches. The Land Department did hold (Ex. B, deft's ans.) that "the fact that William Craig filed his notice in 1855, and allowed the matter to rest until 1869, when he died, without making any attempt to perfect his claim under the donation act, is evidence that he intended to abandon his claim." It would be a good reason for delaying the proof until after the survey, had the act required that such claims must be taken by legal subdivisions, but by a fair construction of the acts the settler is not so limited. That the cert*a*ificate was not issued can not be charged to the neglect of Craig. He had complied fully with the law. His grantees have asked for the certificate and a patent, and the Government has refused. I am unable to see what more the settler could or was required to do.

The question being in the condition shown by the foregoing statement, the Government on the 11th day of June, 1855 (12 Stat., 957), entered into a treaty with the Nez Perce Indians, by which the reservation, within the limits of which this land lies, was assigned to them. Article 10 is as follows:

103 "The Nez Perce Indians having expressed in counsel a desire that William Craig should continue to live with them, he having uniform*liy* shown himself their friend, it is further agreed that the tract of land now occupied by him and described in his notice to the register and receiver of the land office of the Territory of Washington on the fourth day of June, last, shall not be considered a part of the reservation provided for in this tr'aty, except that it shall be subject in common with the lands of the reservation to the operations of the intercourse act."

This article was subsequently adopted and ratified by Congress. It contained a notice to that body that Craig claimed the title, and not a mere right of occupancy to these lands, under laws absolutely granting him such right by his compliance with their provisions, and the notice referred to in the treaty as filed in the land office with his proof would show not only his claim to the land, but also his compliance with the law. Although Congress had such notice of the claim, and recognized Craig's rights to the land as claimed by him by excluding it from the reservation, it has since, by two acts, treated the claim of Craig as a mere right of occupancy.

By the treaty of June 9, 1863 (14 Stat., 647), it was provided that the entire reservation within which is this said land was set apart to the Indians for their exclusive use, and that no white man should be permitted to reside upon the reservation;" and by the act of March 3, 1873 (17 Stat., 627), Craig's rights are expres'ly construed as a mere right of occupancy. That Congress had the right to thus control the land, even to the cancellation of Craig's right and claim thereto, the case of Frisbie vs. Whitney (9 Wall., 187), and the Yosemite Valley Case (15 Wall., 77), are invoked. It was in effect held in those cases that under the pre-emption laws the settler's partial compliance therewith, and his manifested willingness to fully comply, did not give him such a vested right as estopped
104 Congress, prior to his full compliance, from making such other use or appropriation of the land as would operate to prevent him from procuring title.

Careful examination of the Yosemite Valley Case, where the question is fully reviewed, will show that the rule applicable to preemption cases will not hold in one like this. It proceeds upon the theory that under the preemption law the Government does not enter into any agreement to convey to the settler the land he locates upon until it shall have allowed him to complete his entry and claim by the payment of the Government price for the land, and it also allows him the preference over others to buy the land when it shall be offered for sale, and that at any time prior to that the Government may withdraw this privilege and devote the land to any other use. The court says (page 87):

"Until such payment and entry the acts of Congress give to the settler only a privilege of preemption in case the lands are offered for sale in the usual manner; that is, the privilege to purchase them in that event in preference to 'thers. The United States by those acts enter into no contract with the settler and incur no obligation to anyone that the land occupied by him shall even be put up for sale. They simply declare that, in case any of their lands are thrown open for sale, the privilege to purchase them in limited quantities at fixed prices shall be first given to parties who have settled upon and improved them. The legislation thus adopted for the benefit of settlers was not intended to deprive Congress of the power to make any other disposition of the lands before they are offered for sale, or to appropriate them to any public use."

And upon page 94:

"It seems to us little less than absurd to say that a settler or any other person, by acquiring a right to be prefeered in the purchase of property, provided a sale is made by the owner, thereby acquires a right to compel the owner to sell, or such an interest in the property as to deprive the owner of the power to control its disposition."
105 The court illustrates the difference between preemption cases and those under laws where the Government does enter into a direct agreement to convey the title upon compliance with the prescribed precedent conditions by a considerati*no* of the case of Lyttle vs. Arkansas (9 How., 314). This was under the act of May 29, 1830 (4 Stat., 420), which by its first section provided, "That every settler or occupant of public lands prior to the passage of this act, who is now in possession and cultivated any part thereof in the year 1829, shall be, and he is hereby, authorized to enter" the same upon making due proof of the pertinent

facts. The settler had complied with the law as far as he could, but the Land Department refused him title, and the court said that "it is a well-established principle that when an individual in the prosecution of a right does everything which the law requires him to do and he fails to attain his right by the misconduct or neglect of a public officer, the law will protect him," and proceed to award the title to the settler as against the State claiming under a subsequent grant or act of Congress; and in the Yosemite Valley Case, on page 91, the court says of the Lyttle Case: "There is no question about the correctness of the doctrine here announced. It is only a familiar principle which is stated, that where one offers to do everything upon which the acquisition of a right depends and is prevented by fault of the othe' side, his right shall not be lost by his failure. The principle only applies when by law or contract the acquisition of a right is made dependent upon the performance of certain specified acts. There c'n be no such thing as the acquisition of a right of preemption; that is, of a right to be preferred in the purchase of property of the United States, until such property is open for sale. In the case from Arkansas the law of 1830 authorized the entry and sale of the land to the occupants and cultivators. It prescribed certain things to be done to entitle them to purchase. These things were done, or would have been done if the officers of the Government had not failed in their duty."

106 It is too evident for discussion that the different conclusions reached in the two cases are due solely to the different statutes upon which they rest. The earlier case is based upon a statute which gave the settler the absolut' right to the title upon compliance with certain conditions, while by the statute involved in the latter case no such right was granted.

The granting clause in the donation act, while not granting in praesenti, borders closely on it. It reads, "There shall be and hereby is granted," etc., to every set'ler who shall comply with the act. If, under the law of 1830, the set'ler who complied therewith, as far as permitted by the officers, was entitled to his land even against a subsequent grant by the Government, this court is justified in the conclusion that it has reached—that by Craig's compliance with the donation act, in so far as he was not forestalled by Government officials, his right became a vested one, and thus passed beyond the control of Congress.

The plat of the survey of the land made by the Government surveyor did not correspond exactly with the description of it as given by Craig. I think it should be surveyed as described in the notice, but substantially as occupied and cultivated; and to the undivided one-half thereof complainant is entitled to retain the possession.

The defendant is the agent of the Secretary of the Interior. The power of the court to enjoin his agents has not been discussed. Generally the officers of the Departments can not be controlled by injunctions or mandamus while acting in a judicial capacity, in which their judgments are to be based upon a consideration of facts; but in this case the action of the Land Department involved a construction of the law, which is not subject to the same rule. It is held in Noble vs. Railroad Co. (147 U. S., 165, 13 Sup. Ct., 271) that such officers may be enjoined from the performance of an unlawful act. If the complainant is lawfully in the possession of the premises it would be unlawful for defendant to forcibly eject him, and he may be restrained from so doing.

107 The injunction granted by the State court will be continued as prayed by the complainant.

The court appreciates the baneful results that may follow this conclusion. It leaves a tract of land within the reservation subject to the occupation of white men, which is contrary to the wise policy of the Government of excluding them as far as possible. Gladly would the court aid the Indian Department in such exclusions, for there is nothing in the management of the Indians which results in so much annoyance as the residence among them of the whites, and especially of the lawless and abandoned; but, being convinced that the Government, by its laws, *ua*thorized this settlement, and afterwards ratified it, my convictions are followed regardless of consequences. The matt*t*r being important, I presu*j*e and hope it will be reviewed by a higher court. Therefore, in the absence of counsel, it is directed that defendant have time, until otherwise ordered, in which to file his bill of exceptions or to take any necessary steps for a review of the cause by the proper appellate court.

BEATTY, *Judge*.

(Endorsed:) U. S. circuit court, district of Idaho. William A. Caldwell vs. Joseph Robinson. Opinion. Filed Jan. 22nd, 1894. A. L. Richardson, clerk.

108 *Assignment of errors.*

In the circuit court of the United States for the central division of the district of Idaho.

WILLIAM A. CALDWELL, PLAINTIFF and respondent, *vs.* JOSEPH ROBINSON, DEFENDANT AND appellant.	Assignment of errors.

Now comes the defendant and appellant upon the record and proceedings in this action, and assigns the following errors:

I. The court erred in holding and decreeing that the land in controversy was subject to location and settlement, at the date of the alleged entry thereof, by the said William Craig.

II. The court erred in holding and decreeing that the provisions of the original donation act, section 12, 9 Statutes at Large, page 499, and amendments thereto, were applicable to this tract of land.

III. The court erred in holding and decreeing that the said William Craig complied with the provisions of the original donation act, section 12, 9 Statutes at Large, and amendments thereto.

IV. The court erred in holding and decreeing that the alleged location and entry of the said William Craig vested in said Craig such a right prior to his full compliance with the provisions of the law as estopped Congress from making any other use or appropriation of the land in controversy.

V. The court erred in holding and decreeing that the defendant, an officer of the Government, was properly subject to being sued.

VI. The court erred in not dismissing the bill of complaint.

Wherefore, now comes the defendant and appellant and moves to set aside and vacate the decision and decree herein, and both thereof, and that the said action be dismissed.

JAMES H. FORNEY,
Attorney for Defendant and Appellant.

109 (Endor'ed:) In the circuit court of the United States, central division, district of Idaho. William A. Caldwell, respondent, vs. Joseph Robinson, appellant. Assignment of errors. Filed July 14th, 1894. A. L. Richardson, clerk.

110 *Petition for appeal.*

In the circuit court of the United States, ninth judicial circuit, within and for the central division of the district of Idaho.

WILLIAM A. CALDWELL, PLAINTIFF,
vs.
JOSEPH ROBINSON, DEFENDANT. } Petition for appeal.

The above-named defendant, considering himself aggrieved by the judgment and decree entered and filed herein on the 29th day of January, A. D. 1894, in the above-entitled proceedings, by James H. Forney, United States attorney for the district of Idaho, and by direction of the Attorney-General of the United States, doth hereby appeal from said judgment and decree to the Supreme Court of the United States, and prays that this appeal be allowed, and that a transcript of the record of proceedings and papers upon which said decree was made, duly authenticated, may be sent to the clerk of the Supreme Court of the United States.

JAS. H. FORNEY,
United States Attorney for the District of Idaho,
and Attorney for the Defendant and Appellant.

And now, to wit, on the 14th day of July, A. D. 1894, it appearing to me, by the decision of the court herein, that a treaty of the United States, to wit, the treaty of January 9th, 1863, 14 Stat., page 647, and also the treaty of June 11, 1855, 12 Stat., page 957, and also the constitutionality of the law of the United States, to wit, act March 3rd, 1873, 17 Stat. at Large, page 647, are drawn in question in the said cause, it is ordered that the appeal be allowed to the Supreme Court of the United States as prayed for.

JAS. H. BEATTY,
United States District Judge.

(Endorsed:) No. 89. In the circuit court of the United States, district of Idaho. William A. Caldwell vs. Joseph Robinson. Petition for appeal to the U. S. Supreme Court. Filed July 14, 1894. A. L. Richardson, clerk.

111 *Acknowledgment of service of papers, &c.*

In the circuit court of the United States for the district of Idaho.

WILLIAM A. CALDWELL
vs.
JOSEPH ROBINSON. } No. 89.

Service by copy of petition for appeal to the Supreme Court of the United States; petition for appeal to the United States circuit court of appeals for the ninth circuit, and assignment of errors in the above-entitled cause are hereby acknowledged this day of July, 1894.

Attorney for plaintiff.

STATE OF IDAHO,
County of Nez Perce, ss:

I hereby certify that the above-named papers were served upon J. W. Reid, atty. for W. A. Caldwell, by leaving with said J. W. Reid true copies thereof at Lewiston, Idaho, July 21, 1894, and that said J. W. Reid declined to sign the above acceptance of service for the reason that the appeal takes him to two courts, and I herewith return said acceptance in blank.

JOSEPH PINKHAM,
U. S. Marshal.
By C. T. STRANAHAN,
Deputy.

Filed July 26th, 1894. A. L. Richardson, clerk.

112 *Order allowing appeal.*

At a stated term of the United States circuit court for the district of Idaho, held at the court room in Boise City, Idaho, on the 14th day of July, 1894.

Present, Hon. Jas. H. Beatty, judge.

WM. A. CALDWELL
vs.
JOSEPH ROBINSON. } No. 89.

It appearing to the court that a treaty of the United States, to wit:

The treaty of Jan. 9th, 1863 (14 Stat., page 647), and also the treaty of June 11, 1855 (12 Stat., page 957), and also the constitutionality of the law of the United States, to wit, act of March 3rd, 1873 (17 Stat. at Large, page 647), are drawn in question in the said cause upon application of Jas. H. Forney, U. S. district attorney for the district of Idaho.

It is ordered that an appeal to the Supreme Court of the United States from the judgment and decree heretofore filed and entered in this cause be, and the same is hereby, allowed.